

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

HONORABLE LARRY ALAN BURNS, JUDGE PRESIDING

UNITED STATES OF AMERICA,)
PLAINTIFF,) CASE NO. 07CR00330-LAB
VS.) 07CR00329-LAB
BRENT ROGER WILKES, (1)) SAN DIEGO, CALIFORNIA
KYLE DUSTIN FOGGO, (2)) FEBRUARY 19, 2008
DEFENDANTS.) 9:30 A.M.

REPORTER'S TRANSCRIPT

SENTENCING (1)
POST-TRIAL MOTIONS

APPEARANCES:

FOR THE GOVERNMENT:

KAREN P. HEWITT, U.S. ATTORNEY
BY: PHILLIP L.B. HALPERN, ESQ.
JASON A. FORGE, ESQ.
SANJAY BHANDARI, ESQ.
VALERIE CHU, ESQ.
ASSISTANT U.S. ATTORNEYS
880 FRONT STREET
SAN DIEGO, CA. 92101

FOR DEFENDANT WILKES:

GERAGOS & GERAGOS
BY: MARK J. GERAGOS, ESQ.
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-AND-
FEDERAL DEFENDERS, INC.
BY: REUBEN C. CAHN, ESQ.
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1 CONTINUED APPEARANCES:

2 FOR DEFENDANT FOGGO:

AKIN GUMP STRAUSS HAUER & FELD
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8 COURT REPORTER:

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COMPUTER-AIDED TRANSCRIPTION

1 SAN DIEGO, CALIFORNIA - TUESDAY, FEBRUARY 19, 2008 - 9:30 A.M.

2 THE CLERK: CALLING NO. 2 ON THE CALENDAR, 07CR330,
3 UNITED STATES OF AMERICA VERSUS BRENT ROGER WILKES.

4 COUNSEL, PLEASE STATE YOUR APPEARANCE FOR THE
5 RECORD.

6 MR. GERAGOS: GOOD MORNING, YOUR HONOR.

7 MARK GERAGOS, G-E-R-A-G-O-S, ON BEHALF OF
8 MR. WILKES.

9 MR. BHANDARI: GOOD MORNING, YOUR HONOR.

10 SANJAY BHANDARI, PHIL HALPERN, JASON FORGE, AND
11 VALERIE CHU FOR THE UNITED STATES.

12 THE COURT: GOOD MORNING.

13 THIS MATTER IS ON FOR SENTENCING THIS MORNING AS
14 WELL AS RESOLUTION OF POST-TRIAL MOTIONS.

15 IT SEEMS TO ME THE LOGICAL ORDER IS TO TAKE THE
16 POST-TRIAL MOTIONS FIRST. OBVIOUSLY, IF ANY OF THOSE IS
17 GRANTED AND RELIEF IS GIVEN, WE WOULDN'T GO TO SENTENCING.

18 ANY DISAGREEMENT ON THAT?

19 MR. GERAGOS: NO.

20 THE COURT: MR. GERAGOS, I'M HAPPY TO HEAR FROM YOU.
21 I'VE READ ALL OF THE PAPERS BACK AND FORTH, JUST A FEW OF
22 WHICH ARE SITTING IN FRONT OF ME. I'M FAMILIAR WITH THE
23 ARGUMENTS AND THE RESPONSE. I'M HAPPY TO HEAR ANY ADDITIONAL
24 COMMENTS YOU HAVE.

25 MR. GERAGOS: THANK YOU, YOUR HONOR.

COMPUTER-AIDED TRANSCRIPTION

1 AS THE COURT HAS INDICATED, I THINK THAT WE HAVE
2 PRETTY FAIRLY AND THOROUGHLY BRIEFED THE ISSUES HERE AND GONE
3 BACK AND FORTH. I DON'T THINK THAT THERE'S ANY MERIT TO THE
4 MOTION TO STRIKE. AND I ASSUME BY THE FACT YOU'RE AFFORDING
5 THIS ARGUMENT AT THIS POINT, THAT YOU'RE WILLING TO HEAR IT ON
6 THE MERITS.

7 THE COURT: I DENIED IT IN A WRITTEN ORDER AND
8 SIGNED YOUR ORDER TO SHORTEN TIME ON YOUR POST-TRIAL MOTION.
9 I THINK TECHNICALLY THEY WERE RIGHT. THEY WERE RIGHT TO SAY,
10 "WAIT A MINUTE. HERE'S A GUY WHO'S GOING A DEMAND STRICT
11 COMPLIANCE WITH TIMELINESS RULES. AND YET, WHAT'S AN EXCUSE
12 FOR HIS OWN UNTIMELINESS?" THAT ASIDE, I THINK HE'S ENTITLED
13 TO HAVE THE COURT CONSIDER ON THE MERITS THE ARGUMENT YOU
14 MAKE. SO I HAVE, AND I WILL.

15 MR. GERAGOS: THANK YOU.

16 I THINK, FROM MY STANDPOINT AT LEAST AS TRIAL
17 COUNSEL, THAT THE MOST COMPELLING ISSUE, OBVIOUSLY, IS THE
18 ISSUE OF TIME FOR PREPARATION. I KNOW THAT WE'VE SUBMITTED
19 SOME OF THE DOCUMENTS THAT WERE FOUND SUBSEQUENT. I KNOW
20 HAVING LIVED IN THIS COURTROOM FOR WHATEVER PERIOD OF TIME
21 THAT IT'S BEEN, THE 28 DAYS OF TRIAL AND ALL THE OTHER DAYS, I
22 UNDERSTAND THE COURT'S POSITION ON THESE THINGS.

23 BUT FRANKLY, GIVEN THE NATURE AND THE BREADTH AND
24 THE DEPTH OF THE DOCUMENTS THAT WERE INVOLVED, GIVEN WHAT
25 IS -- AND I USE THE CHARITABLE TERM "MISUNDERSTANDING" BETWEEN

COMPUTER-AIDED TRANSCRIPTION

1 THE GOVERNMENT AND MY OFFICE AS TO WHAT WAS OR WAS NOT
2 AVAILABLE AND WHAT WAS BEING DISCLOSED THROUGH THE DOCUMENT
3 CONTROL CENTER, IF YOU WILL, AS OPPOSED TO THE MYRIAD OF
4 DOCUMENTS, THE TERABYTES OF DOCUMENTS, OVER AT THE FBI, THAT
5 THERE JUST WAS NOT SUFFICIENT TIME IN ORDER TO GO THROUGH ALL
6 OF THOSE DOCUMENTS AND TO DO A THOROUGH JOB IN TERMS OF
7 PREPARATION FOR BOTH THE IMPEACHMENT OF WITNESSES AND
8 CONCEIVABLY TO PUT ON OTHER WITNESSES AS WELL.

9 I THINK THAT WHETHER IT WAS FROM START TO FINISH
10 EIGHT MONTHS FOR TWO CASES, AT LEAST INITIALLY, GIVEN THE
11 SHEER VOLUME OF THE DOCUMENTS, THAT IT MAKES IT UNREASONABLE
12 FOR ANY LAWYER, LET ALONE MY OFFICE, TO BE ABLE TO ADEQUATELY
13 PREPARE. AND I THINK THAT THAT, TO MY MIND, IS THE MOST
14 COMPELLING ISSUE ON THE MOTION FOR A NEW TRIAL.

15 I REALIZE THE COURT, AT LEAST IN STEPPING IN YOUR
16 SHOES -- AND THE GOVERNMENT QUOTES THAT ONE COLLOQUY BETWEEN
17 US. AND AS YOU SAW, I THINK I TRIED TO PARSE THAT I
18 UNDERSTOOD YOUR POSITION AT THE POINT. I WASN'T EMBRACING IT.
19 I WAS DOING WHATEVER I COULD TO DEFEND HIM BASED ON THE AMOUNT
20 OF TIME THAT THE COURT AFFORDED ME AND AFFORDED HIM.

21 BUT THE BOTTOM LINE AT THE END, IT WAS INSUFFICIENT
22 TIME. AND I DON'T SAY THAT LIGHTLY, AND I DON'T LIKE
23 CONFESSING TO THE FACT THAT THERE WASN'T SUFFICIENT TIME TO
24 ADEQUATELY DEFEND SOMEBODY. BUT I THINK IN THIS CASE IT
25 CLEARLY WAS THE SITUATION WHERE THERE WAS NO WAY POSSIBLE,

1 GIVEN THE AMOUNT OF TIME FOR THE PREPARATION, GIVEN WHAT WAS
2 GOING ON WITH THE OTHER CASE, THAT THERE WAS AN ADEQUATE
3 AMOUNT OF TIME FOR PREPARATION.

4 THE COURT: THE LAST POINT I'M NOT SURE I FULLY
5 UNDERSTAND. BECAUSE BY JULY 30TH, YOU WERE NOT INVOLVED IN
6 THAT CASE. IN FACT, EVEN BEFORE THEN, EARLY IN JULY -- I HAD
7 RELIEVED YOU FROM THE WILKES/FOGGO MATTER EARLY IN JULY. YOU
8 KNEW YOU WERE OUT OF THAT CASE. MR. WILKES SPENT FOUR TO
9 SIX WEEKS TRYING TO COME UP WITH COUNSEL. AND IT CULMINATED
10 IN MY APPOINTMENT OF THE FEDERAL DEFENDERS OFFICE. SO IF YOU
11 WERE PREPARING FOR TWO CASES, THE --

12 MR. GERAGOS: FOR A PERIOD OF TIME. FROM THE FIRST
13 APPEARANCE IN FEBRUARY THROUGH JULY, THERE WAS STILL JUMBLING
14 THE TWO.

15 THE COURT: IN MAY, WE SET A TRIAL DATE ON THIS
16 CASE, ON WILKES/MICHAEL. AND I INDICATED AT THAT TIME THAT
17 THAT CASE WOULD GO FIRST. I WOULD HAVE THOUGHT THAT YOU WOULD
18 HAVE CONCENTRATED ON THAT CASE GOING FIRST. AND THEN WHAT WAS
19 IT? BY JUNE, WE KNEW THAT THERE WAS A PROBLEM WITH THE
20 CLASSIFIED INFORMATION PROTECTION ACT PROCEDURES. AND SO YOU
21 HAD FULLY THREE MONTHS.

22 I LOOKED AT THE TRANSCRIPT IN THIS CASE,
23 MR. GERAGOS. WE ALL AGREED AT THE MAY 14TH HEARING THAT A
24 TRIAL DATE OF SEPTEMBER 18TH, '07 WAS ENOUGH TIME, WAS
25 INDICATED. AS THE GOVERNMENT POINTS OUT, AT EACH JUNCTURE, I

1 CHASTENED THEM TO DO THINGS THAT THEY DIDN'T HAVE TO DO UNDER
2 LAW. LIKE IT OR NOT, THEY DON'T HAVE TO GIVE OVER WITNESS
3 STATEMENTS BEFORE THE WITNESS TESTIFIES. THEY DID IN THIS
4 CASE, AND I THINK LARGEMLY BECAUSE I PRESSURED THEM.

5 I SAID, "LOOK, I WANT TO BE READY. I HEAR WHAT
6 MR. GERAGOS IS SAYING. IT'S GOING TO BE DIFFICULT TO BE
7 READY. PLEASE GIVE THEM THESE THINGS." THEY COMPLIED. THEY
8 GAVE YOU A WITNESS LIST, WHICH THEY DON'T HAVE TO DO.

9 SO WE DIDN'T GO TO TRIAL ON SEPTEMBER 18TH, AS YOU
10 RECALL. YOU CAME IN AND SAID, "I NEED MORE TIME." I WAS
11 BUFFETED BECAUSE AT THAT POINT WE'D SENT OUT QUESTIONNAIRES TO
12 SOME 750 PROSPECTIVE JURORS AT GREAT COST TO THE COURT SYSTEM.
13 THEY WERE 18-PAGE DOUBLE-SIDED QUESTIONNAIRES THAT WENT OUT.
14 THAT WAS A VERY EXPENSIVE THING TO DO, WARRANTED IN THIS CASE,
15 AT LEAST ONCE.

16 WE HAD 750 MEMBERS OF THE COMMUNITY THAT HAD TAKEN
17 THE TIME, PROBABLY ABOUT AN HOUR, I WOULD THINK, TO FILL THOSE
18 OUT AND TO SEND THEM BACK IN. THOSE PEOPLE HAD BEEN
19 TIME-SCREENED. THEY'D BEEN PUBLICITY SCREENED.

20 IT WASN'T THE ORDINARY CASE WHERE I HAD THE LATITUDE
21 TO SAY, "I DON'T HAVE ANYTHING GOING ON ON SEPTEMBER 18TH. I
22 CAN JUST MOVE THIS." THAT WAS ONE OF THE CONCERNS I HAD. AS
23 YOU RECALL, MR. MICHAEL WAS STILL JOINED IN THE CASE AT THAT
24 TIME. HE HAD NOT HAD HIS HEALTH PROBLEM YET. WE HAD A
25 PROBLEM WITH YOUR CO-COUNSEL BECAUSE HE HAD BEEN SET FOR TRIAL

1 IN BROOKLYN, AS I RECALL, IN NOVEMBER AND SAID, "IF WE PUSH
2 THIS TOO FAR BACK, I WON'T BE READY."

3 I'M RELUCTANT WHEN A FELLOW HAS A TRIAL DATE SET TO
4 SAY "WELL, I'M GOING TO IMPOSE A DIFFERENT TRIAL DATE" AND
5 TELL HIM HE HAS TO BE HERE. I WOULDN'T DO THAT. I WOULDN'T
6 WANT THAT DONE TO ME. SO RESPECTING THAT THE TRIAL HAD BEEN
7 SET, WE HAD TO ACCOMMODATE THAT. AND THE ACCOMMODATION WAS
8 REACHED. YOU ACQUIESCED.

9 MR. GERAGOS: I ACQUIESCED ONLY BECAUSE OF THE
10 CO-COUNSEL. THE IRONY OF THE FACT IS THAT THEY ENDED UP NEVER
11 TRYING THE CASE. THEY NEVER TRIED THE CASE WITH US. WE WERE
12 PLACED, I THINK -- WHATEVER IT WAS, THREE WEEKS OR 18 DAYS
13 PRIOR TO GOING TO TRIAL BASED UPON THEIR SCHEDULE, THEIR
14 ISSUES. AND THEN THEY --

15 THE COURT: THAT'S ALWAYS THE WAY. WE HAVE TO MAKE
16 DECISIONS ON THE BEST INFORMATION AVAILABLE AT THE TIME. AND
17 AT THE TIME, HE SAID, "I HAVE A TRIAL IN BROOKLYN, NEW YORK IN
18 NOVEMBER." AND AS YOU KNOW, I'M REQUIRED TO LOOK AT THAT
19 FACTOR, TOO; THE INCONVENIENCE TO OTHER COUNSEL. HE JUST
20 COULDN'T DO IT. IT WAS CUTTING IT TOO CLOSE IF I GAVE A FULL
21 MONTH AT THAT POINT.

22 BUT THERE WAS AN ACCOMMODATION REACHED. AND THE
23 TRANSCRIPT REFLECTS THAT, AND YOU AGREED TO IT. AND THEN I
24 LOOK AT THE WAY THE TRIAL PROCEEDED, AND YOU WERE GIVEN
25 ADDITIONAL TIME. FROM THE BEGINNING, I TOLD YOU "HAVE YOUR

1 WITNESSES READY BECAUSE IF YOU'RE GOING TO PRESENT A CASE WHEN
2 THE GOVERNMENT RESTS, I'M GOING TO LOOK TO YOU TO CALL YOUR
3 WITNESSES."

4 THE FIRST WITNESS YOU CALLED WAS KIND OF A FILLER.
5 AND I DON'T KNOW IF YOU'RE DESIGN HAD CRYSTALLIZED THEN TO
6 CALL MR. WILKES AS A WITNESS. BUT CERTAINLY, HE COULD HAVE
7 BEEN CALLED THAT DAY. AS YOU RECALL, WE RECESSED AT ABOUT
8 11:00 A.M. ON THE THURSDAY AFTER THE GOVERNMENT RESTED THAT
9 MORNING, AND WE HAD THE ONE FILLER WITNESS.

10 AND THEN I GAVE SPECIAL DISPENSATION FOR YOU TO BE
11 OFF THE NEXT DAY.

12 DO YOU REMEMBER THAT?

13 MR. GERAGOS: I DO, THE FRIDAY.

14 THE COURT: YOU HAD AN IMPORTANT APPOINTMENT IN
15 LOS ANGELES, WHICH I RESPECTED. AND AT THE TIME, I THOUGHT
16 "OKAY. HE SAYS HE NEEDS MORE TIME TO LOOK AT THESE
17 DOCUMENTS."

18 I'M NOW TOLD FROM MR. SILLER (PHONETIC) FROM THE FBI
19 THAT THEY TOOK SERIOUSLY WHAT YOU SAID, WHICH WAS "I NEED TIME
20 TO GO OVER THERE. I HAVE OTHER LAWYERS WITH ME. WE'LL GO
21 LOOK AT THESE THINGS. THEN I'LL BE READY TO GO COME TUESDAY."
22 MR. SILLER SAYS WITH THAT IN MIND, HE ORGANIZED FBI AGENTS TO
23 BE READY TO STAND BY AND PROVIDE THE STUFF AND TO MONITOR
24 WHILE YOU WERE THERE. AND ON FRIDAY AFTERNOON, HE GETS A CALL
25 SAYING, "WE'RE NOT COMING. WE'RE NOT GOING TO COME LOOK AT

1 THIS."

2 THEN AS WE WENT FORWARD, OBVIOUSLY, THE FIRES
3 OCCURRED. I DON'T THINK THAT WAS DISRUPTIVE TO YOU PERSONALLY
4 AS YOUR OFFICES ARE IN LOS ANGELES. YOU WERE ABLE TO CONTINUE
5 YOUR PREPARATION THERE. AND FROM MR. SILLER'S DECLARATION, I
6 SEE THAT AT THE FBI OFFICE, ALL THE MATERIALS WERE WAITING
7 THAT WEEK.

8 MR. GERAGOS: MR. WILKES AND HIS MOTHER AND HIS
9 FAMILY WERE DISPLACED BECAUSE OF THE FIRES. SO THAT IS
10 SOMEWHAT DISINGENUOUS FROM MR. SILLER'S STANDPOINT.

11 MR. SILLER ALSO KNOWS THAT WE HAD AT THAT POINT --
12 AND I BROUGHT IT TO THE COURT'S ATTENTION -- REAL ISSUES WITH
13 THE WAY THAT THE FBI WAS CONDUCTING OR ALLOWING US TO BE IN
14 THERE, TO THE POINT WHERE I -- ACTUALLY, ONE OF MY ASSOCIATES
15 GRABBED PAPERWORK THAT HE WAS COPYING WHILE WE WERE GOING
16 THROUGH THE DOCUMENTS.

17 THE COURT: I REMEMBER THAT. ALL OF THOSE ISSUES
18 COULD HAVE BEEN BROUGHT TO MY ATTENTION. I WAS AVAILABLE ALL
19 WEEK. IN FACT, YOU AND I AND GOVERNMENT COUNSEL WERE
20 AVAILABLE AND IN CONVERSATIONS VIA CELL PHONE EVEN WHILE THE
21 FIRES BURNED HERE.

22 SO THE GOVERNMENT CHARACTERIZES IT AS THE COURT
23 BENDING OVER BACKWARDS TO ACCOMMODATE YOU AND MR. WILKES AND
24 TO MAKE SURE THAT YOU HAD EVERY OPPORTUNITY TO BE PREPARED,
25 AND I THINK THAT'S A FAIR CHARACTERIZATION. I DON'T MEAN TO

1 PAT MYSELF ON THE BACK. BUT I THINK THAT RATHER THAN
2 PEREMPTORILY DISMISSING THE CONCERNS THAT YOU RAISED, THAT I
3 LISTENED TO THEM AND THAT I TOOK THEM INTO CONSIDERATION. I
4 ACTED ON THEM BY POSTPONING THE TRIAL.

5 HE WAS ARRAIGNED AT THE BEGINNING OF FEBRUARY. HIS
6 TRIAL BEGAN EIGHT MONTHS LATER. NOW, I UNDERSTAND THERE'S A
7 LOT OF INFORMATION IN THIS CASE, BUT EIGHT MONTHS IS A LOT OF
8 TIME FOR AN EXPERIENCED LAWYER LIKE YOU TO BECOME PREPARED ON
9 THE CASE.

10 MR. GERAGOS: SEE, THAT'S WHERE WE -- I GUESS
11 REASONABLE MINDS CAN DIFFER. I DON'T THINK THERE IS ANY
12 LAWYER, LET ALONE LAW FIRM, THAT'S GOING TO SAY THAT THEY CAN
13 GET PREPARED IN EIGHT MONTHS GIVEN THE AMOUNT OF INFORMATION.
14 THERE IS NO WAY THAT YOU CAN SAY THAT YOU CAN GET THROUGH
15 WHATEVER IT WAS, WE'VE ESTIMATED IT FROM THREE TERABYTES TO
16 EIGHT TERABYTES AT VARIOUS TIMES --

17 THE COURT: THOSE NUMBERS -- THAT MASS OF
18 INFORMATION IS NOT PARTICULARLY MEANINGFUL BECAUSE, AS YOU
19 CONCEDE AND AS I KNOW, A LOT OF IT WAS CHAFE. A LOT OF IT WAS
20 THINGS THAT YOU'D ALREADY BEEN GIVEN IN HARD COPY FORM. THE
21 SEARCH WARRANTS, FOR EXAMPLE. YOU TOLD ME YOU HAD NO INTEREST
22 IN SURVEILLANCE REPORTS. SOME OF IT WAS SURVEILLANCE REPORTS.

23 I TAKE YOUR POINT THAT THERE WAS A LOT OF
24 DOCUMENTATION. AND TO KNOW WHETHER IT WAS CHAFE OR NOT, YOU
25 HAD TO AT LEAST --

COMPUTER-AIDED TRANSCRIPTION

1 MR. GERAGOS: SOMEBODY HAD TO GO THROUGH IT.

2 HOW DO YOU DECIDE WHETHER IT IS OR NOT?

3 THE COURT: YOU HAD TWO YOUNG LAWYERS WORKING WITH
4 YOU, AT LEAST TWO. AT ONE POINT, I EXTENDED THE APPOINTMENT
5 OF FEDERAL DEFENDERS TO ASSIST WITH PART OF THIS CASE. I
6 MEAN, THE TRUTH OF THE MATTER IS, MR. GERAGOS, YOU'RE VERY
7 MUCH IN DEMAND. YOU'RE A VERY POPULAR LAWYER. AND I LOOKED
8 BACK -- IN CONSIDERING THIS MOTION, I LOOKED BACK AT THE
9 TRANSCRIPTS. AT ONE POINT, YOU WERE IN MOLDOVA FOR A COUPLE
10 WEEKS.

11 MR. GERAGOS: FOR A WEEK.

12 THE COURT: AT ANOTHER POINT, I KNOW YOU HAD TO
13 CANCEL AN APPEARANCE AT THE DUKE LAW SCHOOL.

14 MR. GERAGOS: WHICH I DID CANCEL SO I COULD BE HERE.
15 THE PROBLEM WAS IS MOST OF THE ACCOMMODATIONS HAPPENED -- MOST
16 OF THE COURT'S BENDING OVER BACKWARDS HAPPENED POST-GOVERNMENT
17 CASE. EVERYTHING THAT YOU WENT THROUGH, THE FIRES AND
18 EVERYTHING ELSE, WAS AFTER THE GOVERNMENT'S CASE.

19 THE COURT: BUT WE HAD A SEPTEMBER 18TH TRIAL DATE,
20 AND WE DIDN'T START UNTIL OCTOBER.

21 MR. GERAGOS: EVEN IF THERE'S THREE TERABYTES, WHAT
22 IS THAT, A TERABYTE A WEEK? I DON'T THINK -- IF I WERE TO
23 FIGURE OUT HOW MUCH TIME IT TAKES TO GO THROUGH A TERABYTE,
24 WHICH I STILL HAVEN'T CALCULATED BECAUSE I DON'T EVEN KNOW
25 WHAT A TERABYTE IS -- I KNOW THAT IT'S A LOT MORE THAN A

1 MEGABYTE OR SOMETHING OF THAT NATURE -- HOW IN THE WORLD CAN
2 YOU SAY TO A LAWYER "YOU'VE GOT TO BE READY," NO MATTER HOW
3 MANY LAWYERS YOU HAVE WORKING FOR YOU, "TO GO THROUGH ALL
4 THESE DOCUMENTS AND TO HAVE YOUR CLIENT THEN GO THROUGH AND
5 ASSIST YOU IN PREPARING FOR IT."

6 AND FOR WHATEVER IT MAY BE ON THE DEFENSE CASE, AS
7 THIS COURT WELL KNOWS, YOU CAN TRY A CASE COMPLETELY WITHIN
8 THE GOVERNMENT'S CASE. AND YOU HAVE TO BE PREPARED TO DEAL
9 WITH GOVERNMENT WITNESSES. AND MOST OF THIS STUFF THAT WAS IN
10 THERE, WHETHER IT WAS THE SERVERS OR ANYTHING ELSE, GOES TO
11 THE IMPEACHMENT OF THE GOVERNMENT WITNESSES.

12 THE COURT: HERE'S WHAT'S HAPPENED. HERE'S WHAT I'M
13 LEFT TO BELIEVE HAS HAPPENED.

14 SOMETIME OR SOMEHOW BETWEEN THE END OF MR. WILKES'S
15 TRIAL AND WHEN YOU FILED YOUR PAPERS, YOU WERE ABLE TO GO
16 THROUGH ALL OF THIS.

17 MR. GERAGOS: NOT ALL OF IT, BUT WE WENT THROUGH A
18 SUBSTANTIAL PORTION.

19 THE COURT: IT'S BEEN MUCH LESS THAN EIGHT MONTHS.
20 IT'S BEEN A COUPLE OF MONTHS SINCE MR. WILKES'S CONVICTION IN
21 THIS CASE BY THE JURY.

22 MR. GERAGOS: THREE MONTHS.

23 THE COURT: BUT AT THE POINT YOUR PAPERS WERE FILED,
24 MAYBE TWO MONTHS. SO IT CONVINCES ME THAT ALL OF IT COULD
25 HAVE BEEN DONE. IT COULD HAVE BEEN DONE IN THAT PERIOD OF

1 TIME. YOU HAD SIX ADDITIONAL MONTHS BEYOND THE TWO MONTHS,
2 OBVIOUSLY, THAT IT'S TAKEN TO DO THIS.

3 LOOK, I RESPECT YOUR STATEMENT THAT REASONABLE MINDS
4 DIFFER. MY REASONABLE MIND TELLS ME THAT EIGHT MONTHS, GIVEN
5 ALL OF THE ACCOMMODATIONS THAT WERE MADE IN THIS CASE AND
6 SOMETHING REALLY EXTRAORDINARY, THE COURT TELLING THE
7 GOVERNMENT "I KNOW YOU DON'T HAVE TO DO THIS, BUT I'D LIKE YOU
8 TO DO THIS. PLEASE FACILITATE THIS FELLOW'S PREPARATION TO
9 DEFEND HIS CLIENT," IT DOESN'T RESONATE WITH ME, MR. GERAGOS,
10 THAT YOU DIDN'T HAVE ENOUGH TIME.

11 I THINK YOU SPREAD YOURSELF A LITTLE THIN. I THINK
12 YOU TAKE ON A LOT OF CASES. I THINK THERE'S A HIGH DEMAND FOR
13 YOU. BUT I CAN'T CONTROL THAT. I CAN'T TELL YOU "DON'T TAKE
14 OTHER CASES WHILE YOU'RE DEFENDING OR PREPARING FOR THIS
15 CASE." I CAN'T DO THAT. I WOULDN'T PRESUME TO DO THAT, AND I
16 DIDN'T HERE.

17 I'M ASSUMING THAT WHEN YOU TOOK MR. WILKES'S CASE,
18 YOU TOLD HIM "I'LL BE READY." I'M MAKING THE SAME ASSUMPTION
19 THAT ON MAY 14TH WHEN WE SET THE SEPTEMBER 18TH TRIAL DATE AND
20 YOU SAID "I CAN BE READY," THAT YOU MEANT WHAT YOU SAID. I
21 HAVE A RIGHT TO RELY ON THAT.

22 MR. GERAGOS: EXCEPT WHEN I MADE THE MOTION FOR A
23 CONTINUANCE TO BRING TO THE COURT'S ATTENTION WHAT I
24 CONSIDERED TO BE AN UNBELIEVABLE AMOUNT OF PAPERWORK, I DON'T
25 KNOW IF THE COURT HAS EVER EXPERIENCED THAT MAGNITUDE OF

1 DISCOVERY OR DOCUMENTS IN ANY CASE THAT IT'S EVER TRIED IN ITS
2 CAREER. I HAVE NEVER.

3 THE COURT: NO, I HAVEN'T. WHEN I WAS TRYING CASES,
4 THEY DIDN'T HAVE ANYTHING CALLED A TERABYTE. I UNDERSTAND THE
5 POINT. I'VE HAD CASES WITH MASS DOCUMENTS. I MEAN, LET ME
6 SAY THIS: PART OF MY THINKING ON THIS IS CONDITIONED BY
7 WATCHING YOUR PERFORMANCE HERE. YOU SEEMED FULLY PREPARED. I
8 MARVELED AT HOW YOU WERE ABLE TO GET IN AND GET TO THE POINT
9 WITH SOMEBODY. YOU HAD A FILE READY WITH EACH WITNESS. THE
10 FIRST TEN WITNESSES, MR. GERAGOS, I SAT HERE AND MARVELED AT
11 THE PERFORMANCE BECAUSE EITHER YOU NEUTRALIZED THEM OR YOU
12 TURNED THEM AROUND.

13 YOU WERE ASSISTED BY MR. NALGIN. I REMEMBER AT
14 TIMES MR. NALGIN HANDING YOU UP A LAPTOP COMPUTER WITH A
15 SCREEN THAT YOU USED. SO TO SUGGEST THAT A LACK OF
16 PREPARATION HAMPERED YOUR REPRESENTATION OF MR. WILKES JUST
17 DOESN'T SQUARE WITH MY RECOLLECTION OF HOW THE TRIAL WAS
18 CONDUCTED.

19 I THOUGHT YOU DID A MAGNIFICENT JOB OF IMPEACHING
20 AND POINTING OUT INCONSISTENCIES IN THE WITNESSES' TESTIMONY.
21 IF I THOUGHT OTHERWISE, THEN MAYBE I WOULD SCRATCH MY HEAD AND
22 SAY, "WELL, I PROBABLY SHOULD HAVE GIVEN HIM ENOUGH TIME
23 BECAUSE HE WASN'T READY." BUT THERE WAS NO HINT OF THAT IN
24 YOUR TRIAL PERFORMANCE. YOU HAD A FOLDER FOR EACH WITNESS, AS
25 I SAID. YOU HAD AN OBJECTIVE. GOOD CROSS-EXAMINERS HAVE AN

1 OBJECTIVE. YOU DID, AND YOU STUCK TO IT. YOU GOT IN AND YOU
2 GOT OUT AND SAT DOWN.

3 I DON'T SAY THAT TO FLUFF YOU, MR. GERAGOS.

4 PREJUDICE IS PART OF THE CALCULATION HERE. THERE WAS NO
5 PREJUDICE. THESE WITNESSES WERE FULLY EXAMINED BY YOU.

6 MR. GERAGOS: I APPRECIATE THE COURT'S COMMENTS.
7 BUT WHEN YOU GET IN AND YOU GET OUT, WHAT ENDS UP BEING --
8 SPECIFICALLY IN THIS CASE, IF YOU BELIEVE WHAT YOU READ ABOUT
9 JUROR COMMENTS AFTERWARDS, SPECIFICALLY WHAT KIND OF TURNED
10 THE TIDE FOR THEM APPARENTLY WAS PARKVIEW.

11 THE COURT WILL REMEMBER THAT I SPECIFICALLY -- ONE
12 OF MY MAIN PROBLEMS WAS THAT I KIND OF DEFERRED THE PARKVIEW
13 PORTION OF THIS CASE OVER TO MY CO-COUNSEL, WHO THEN -- I
14 GUESS IT WOULD HAVE BEEN 72 HOURS, 96 HOURS, AS THE COURT WILL
15 REMEMBER, WE WERE HAVING CONFERENCES AND PHONE CONFERENCES AND
16 TRYING TO DEAL WITH THE FACT OF THE MEDICAL SITUATION. THEY
17 DIDN'T GO AWAY. I'M HAVING TO GET UP TO SPEED OR TRYING TO
18 GET UP TO SPEED ON PARKVIEW, WHICH WAS NOT THE MAIN THRUST OF
19 WHAT I THOUGHT THE DEFENSE OF THIS CASE WAS.

20 SUBSEQUENT TO THAT, AS THIS COURT KNOWS BECAUSE THIS
21 COURT'S HAD A CHANGE IN THE BAIL STATUS, I THINK, AND SOME
22 OTHER CONDITIONS OF RELEASE AS TO MR. KONTOGIANNIS, THERE'S
23 BEEN CLEAR EVIDENCE OF OTHER ISSUES AS TO THAT THAT I WOULD
24 HAVE MORE FULLY EXPLORED, THAT I WOULD HAVE LOOKED THROUGH IF
25 I PREPARED THAT PORTION OF THE CASE AND THOUGHT AND EXPECTED

1 THAT I WAS GOING TO TAKE THE LEAD IN THAT.

2 THE COURT: I DON'T KNOW THAT THAT WOULD HAVE
3 BOLSTERED YOUR DEFENSE, THOUGH, BECAUSE YOUR DEFENSE WAS
4 DIFFERENT FROM SAYING, "WELL, KONTOGIANNIS DIDN'T LAUNDER
5 MONEY. KONTOGIANNIS DIDN'T COVER UP RECORDS." YOUR DEFENSE,
6 AS I UNDERSTOOD IT, WAS MR. WILKES SAID, "I'VE NEVER MET TOMMY
7 KONTOGIANNIS. I DON'T KNOW WHO HE IS. WHAT I WAS TOLD BY
8 FORMER CONGRESSMAN CUNNINGHAM IS 'HERE'S AN OPPORTUNITY TO
9 INVEST IN SOMETHING,' AND SO I SENT AN INVESTMENT IN PURSUANT
10 TO THE ADVICE I GOT."

11 NOW, NONE OF THAT IMPLICATES THE PARKVIEW RECORDS.
12 WHATEVER HAPPENED ONCE HIS MONEY HIT NEW YORK HE DIDN'T KNOW
13 ABOUT. AND HE TESTIFIED HIMSELF THAT HE MADE AN EFFORT THEN
14 TO GET THE MONEY BACK AS QUICKLY AS POSSIBLE.

15 NOW, IF THAT'S THE DEFENSE, THE PARKVIEW RECORDS
16 HAVE VERY LITTLE TO DO WITH IT. WHAT HAPPENED THERE,
17 ACCORDING TO YOUR THEORY OF DEFENSE, WAS TOTALLY INDEPENDENT
18 AND OUTSIDE THE KNOWLEDGE OF MR. WILKES. SO I DON'T KNOW HOW
19 ANY OF THAT IMPLICATES --

20 MR. GERAGOS: I THINK CLEARLY WHATEVER PATTERN AND
21 PRACTICE HE HAD WITH OTHERS IN TERMS OF THESE INVESTMENTS THAT
22 WERE GOING TO PARKVIEW, HE'S PROMISING HIM SOME KIND OF RETURN
23 IF HE'S DOING OTHER KINDS OF SETTING UP THE SAME KIND OF A
24 SCAM, IF YOU WILL, WITH OTHERS, WHICH APPARENTLY HE WAS DOING.
25 AND APPARENTLY POST-TRIAL THERE'S BEEN EVIDENCE THAT THAT'S

COMPUTER-AIDED TRANSCRIPTION

1 SOMETHING THAT HE'S NOT ONLY DOING HERE NATIONALLY, BUT
2 INTERNATIONALLY AS WELL WHILE HE'S OUT ON BAIL.

3 THE COURT: YOU KNEW THAT BEFORE. MR. GRANGER STOOD
4 UP AND SAID, "JUDGE, KONTOGIANNIS IS A CROOK. HE'S CONTINUING
5 TO COMMIT CRIMES WHILE HE'S OUT ON BAIL. WE KNEW THAT BEFORE
6 WILKES'S CASE WENT TO TRIAL."

7 MR. GERAGOS: EXCEPT WE KNEW WHAT THE ALLEGATIONS
8 WERE. THE COURT, I THINK, AT ONE POINT SAID THAT THEY HAD
9 PAID HIM, I THINK, KIND OF JOKINGLY. THE FACT IS THAT NOTHING
10 WAS ACTUALLY PROVEN OR EMBRACED BY THE GOVERNMENT UNTIL
11 POST-TRIAL.

12 YOU'LL REMEMBER AT THE TIME THAT THE GOVERNMENT DID
13 NOT OR CLAIMED TO HAVE NO KNOWLEDGE OR NO INFORMATION OF ANY
14 OF THAT AT THE TIME WHEN I WAS STANDING HERE. IT WAS ONLY
15 AFTERWARDS THAT I THEN GO ON PACER AND FIND PROCEEDINGS WHERE
16 THE GOVERNMENT IS NOW BRINGING TO THE COURT'S ATTENTION "WAIT
17 A SECOND. APPARENTLY, MR. GRANGER, IN THE MOTIONS AND THE
18 INVESTIGATION HE HAS DONE, HAS BORE SOME FRUIT, AND
19 KONTOGIANNIS IS THE SCAM ARTIST THAT HE PAINTED HIM OUT TO
20 BE."

21 THAT WASN'T SOMETHING THAT WE HAD PREPARED AND DEALT
22 WITH OR EMBRACED BECAUSE THAT REALLY WAS NOT -- WE HAD HOPED
23 THAT THEY WERE GOING TO AND HAD TALKED ABOUT THEM TAKING THE
24 LEAD ON ALL OF THAT.

25 THE COURT: CONNECT THE DOTS FOR ME.

COMPUTER-AIDED TRANSCRIPTION

1 MR. WILKES'S POSITION AT TRIAL WAS "I DON'T KNOW
2 ANYTHING ABOUT KONTOGIANNIS. ALL I KNOW IS THAT THIS
3 CONGRESSMAN THAT I'M FRIENDLY WITH SAID, 'HERE'S A CHANCE TO
4 EARN EIGHT PERCENT, TEN PERCENT ON YOUR MONEY.' AND SO I
5 DISPATCHED \$525,000. NOW, WHEN I STARTED TO GET A LITTLE BIT
6 INSECURE ABOUT THAT PROPOSITION, I TRIED TO GET MY MONEY
7 BACK."

8 WHATEVER HAPPENED AT PARKVIEW HAPPENED, BUT THAT WAS
9 OF NO CONCERN OF MR. WILKES OR HIS DEFENSE ON THAT. HIS
10 DEFENSE ESSENTIALLY WAS "I THOUGHT THIS WAS AN INVESTMENT. I
11 DON'T KNOW WHAT KONTOGIANNIS WAS REALLY DOING WITH IT." I
12 DON'T THINK THERE'S ANY REASON WHY HE WOULD WANT TO PROVE THAT
13 KONTOGIANNIS WAS A CROOK, HOW THAT HELPS MR. WILKES.

14 MR. GERAGOS: CLEARLY, IF TOMMY K. IS OUT THERE AND
15 HE'S GOT A PATTERN AND PRACTICE OF TELLING PEOPLE "GIVE ME
16 MONEY. I'M GOING TO PAY YOU NINE PERCENT," IS WHAT THE CLAIM
17 WAS --

18 THE COURT: THIS ENTREATY CAME FROM CUNNINGHAM, NOT
19 FROM KONTOGIANNIS.

20 MR. GERAGOS: IF TOMMY K. IS TELLING THAT TO OTHERS
21 BESIDES CUNNINGHAM -- YOU'LL REMEMBER THE GOVERNMENT'S
22 POSITION IN THE CLOSING WAS "HE CALLED CUNNINGHAM FOR
23 FINANCIAL ADVICE," BLAH, BLAH, BLAH. WELL, IF THAT'S WHAT
24 HE'S TELLING OTHERS AND OTHER SOPHISTICATED INVESTORS ARE
25 DOING THE SAME THING AND HAVE BEEN DOING THE SAME THING FOR A

1 PERIOD OF TIME AND IF THIS GUY IS SO BRAZEN, TOMMY K., TO SIT
2 BEFORE THIS COURT AND COMMIT CRIMES AFTER THIS COURT HAS BEEN
3 KIND ENOUGH TO RELEASE HIM, THAT, I THINK, SAYS OR SPEAKS
4 VOLUMES AS TO WHETHER OR NOT YOU CAN BELIEVE ANYTHING THAT
5 EMANATES FROM PARKVIEW.

6 IF THAT'S THE CASE, WHY WOULDN'T MR. WILKES BE ABLE
7 TO PUT HIMSELF IN A POSITION WHERE HE'S ABLE TO SAY, "HEY, I
8 WAS DUPED JUST LIKE JUDGE BURNS WAS DUPED. I WAS DUPED JUST
9 LIKE THE NEW YORK SUPERINTENDENT WAS DUPED. I WAS DUPED JUST
10 LIKE COUNTLESS OTHER PEOPLE WHO HAVE BEEN LEFT HOLDING THE BAG
11 FOR THIS BAD MAN TOMMY K"?

12 I THINK THAT'S FAIR GAME. I THINK THAT'S SOMETHING
13 THE JURORS WOULD EMBRACE. AND AT A CERTAIN POINT, IF YOU PUT
14 ON -- THE FACT THAT I CHOOSE NOT TO PUT ON CONGRESSMAN
15 CUNNINGHAM, THEY CHOOSE NOT TO PUT ON CONGRESSMAN CUNNINGHAM,
16 THEY THEN MAKE THE ARGUMENT THAT "WE'RE NOT GOING TO PUT ON
17 SOMEBODY SO THAT HE GETS A SENTENCING BENEFIT," WE LATER
18 LEARNED THAT, IN FACT, THEY HAD GIVEN HIM A SENTENCING
19 BENEFIT.

20 IF I HAD KNOWN AT THE SAME TIME THAT THEY WERE GOING
21 TO WAIT UNTIL AFTER THE TRIAL TO SAY "OKAY. NOW WE EMBRACE
22 MR. GRANGER'S POSITION. AND JUDGE, WE WANT YOU TO DO
23 SOMETHING TO TOMMY K.," IF YOU PUT A WITNESS UP THERE LIKE
24 TOMMY K. IN FRONT OF THE JURY KNOWING NOW WHAT I KNOW ABOUT
25 HIM, HOW COULD ANY JUROR -- HOW COULD YOU LOOK AT 12 PEOPLE IN

1 THE BOX AND SAY, IF YOU WERE THE GOVERNMENT, "WELL, YOU KNOW
2 WHAT, WE WANT YOU TO FORGET ABOUT EVERYTHING HE SAYS AND JUST
3 BELIEVE THIS ONE PART OR THE FACT THAT HE HASN'T REPRESENTED
4 SOMETHING TO 25 OTHER PEOPLE OR SCAMMED 25 OTHER PEOPLE."

5 THIS IS SOMEBODY WHO CLEARLY WAS ENGAGING IN A
6 PATTERN AND PRACTICE. I AGREE WITH YOU THAT MR. WILKES DIDN'T
7 TALK WITH HIM DIRECTLY. BUT THE ONLY WAY YOU CAN GET TO IT
8 AND TALK ABOUT "IS THIS HOW YOU WERE MARKETING YOURSELF? IS
9 THIS HOW YOU WERE DEALING WITH OTHER PEOPLE? HOW HAVE YOU
10 BEEN ABLE TO DO THAT FOR SO LONG?" IS TO PUT HIM ON AND FRY
11 HIM A LITTLE BIT.

12 FRANKLY, I'M NOT SO SURE THAT I ACCEPT AT FACE VALUE
13 THE GOVERNMENT'S CONTENTION THAT THEY DIDN'T KNOW ABOUT ANY OF
14 THIS UNTIL AFTER THE TRIAL. I JUST FIND THAT HARD TO BELIEVE.
15 I THINK THAT IF FURTHER INVESTIGATION OR FURTHER DISCLOSURE
16 WAS DONE, THAT YOU WILL FIND THAT THE GOVERNMENT WAS WELL
17 AWARE THAT TOMMY K. WAS COMMITTING THESE ACTS WELL BEFORE THIS
18 TRIAL TOOK PLACE. AND THAT'S WHY THEY MADE A DECISION NOT TO
19 CALL HIM WHILE THEY WERE AT ALL TIMES, I THINK, CLEAR ABOUT
20 LETTING THAT PORTION OF THE CASE BE SEVERED OFF.

21 SO WHAT I'M LEFT WITH IN DEFENDING MR. WILKES IS
22 HAVING TO DEAL WITH AN AREA OR A SEGMENT OF THIS CASE THAT IS
23 NOT REALLY OUR LOOKOUT. I MEAN, I WOULD AGREE WITH THE COURT
24 IN THIS SENSE: I DON'T THINK THAT IT HAD ANYTHING TO DO WITH
25 THE CROSS-EXAMINATION OF THESE FIRST TEN WITNESSES. I THINK

1 WHEN IT CAME TO THE FIRST TEN WITNESSES, THAT WAS THE PART OF
2 THE CASE THAT WAS SQUARELY SOMETHING WE COULD DEAL WITH WITH
3 MR. WILKES BECAUSE IT WAS WHAT WE WERE PREPARED FOR, AND IT
4 WAS THE TRUTH.

5 THE WITNESSES -- THIS WHOLE IDEA THAT I INVITED THE
6 REPLY OF THE GOVERNMENT BY HOW WASHINGTON WORKS IS BELIED BY
7 THE FACT -- YOU KNOW WHERE THAT CAME FROM. THAT WAS IN THEIR
8 OPENING STATEMENT, "THIS ISN'T HOW WASHINGTON WORKS," THEIR
9 MULTI-MEDIA PRESENTATION. THEIR WHOLE OPENING STATEMENT WAS
10 "THIS IS NOT HOW WASHINGTON WORKS," WHICH ALL WE WERE DOING
11 WAS REPLYING "SORRY. YOU DIDN'T OBVIOUSLY DO YOUR
12 INVESTIGATION. THIS IS PRECISELY HOW WASHINGTON WORKS."

13 THE ONLY FLY IN THE OINTMENT, SO TO SPEAK, OF THIS
14 CASE, I BELIEVE, HAS TO DO WITH PARKVIEW AND THE LACK OF
15 INFORMATION THAT WE WOULD HAVE HAD SURROUNDING THAT AND
16 EVERYTHING ELSE. AND THEY KNEW ABOUT TOMMY K., I BELIEVE. I
17 THINK IT WILL COME OUT AT SOME POINT. THEY KNEW WHAT HE WAS
18 DOING PRIOR TO THE TRIAL. NONE OF THAT WAS DISCLOSED. THEY
19 WAITED UNTIL AFTERWARDS, CONVENIENTLY, AND IT WAS DISCLOSED.

20 AND I THINK THEY THEN -- THAT WAS A CONSCIOUS
21 DECISION ON THE GOVERNMENT'S PART. AND I THINK WHEN YOU
22 COMBINE ALL OF THAT WITH THE -- I KNOW YOU BELIEVE THAT EIGHT
23 MONTHS IS ENOUGH. EVEN GIVEN THAT THERE WAS EIGHT MONTHS FOR
24 THEM TO SPEND EVEN THOUGH THERE WERE TWO CASES THAT WERE
25 PENDING FOR AT LEAST THREE OF THOSE EIGHT, I DON'T THINK THAT

1 THERE'S ANY LAWYER WHO'S GOING TO SAY THAT "IF I HAD NOTHING
2 ELSE TO DO, I CAN SPEND ALL OF MY TIME DEALING WITH HOWEVER
3 MANY TERABYTES OF INFORMATION IN PREPARING FOR THIS TRIAL."

4 THE COURT: THERE'S ONE LAWYER WHO CAN AND DID SAY
5 THAT ON MAY 14TH, 2007. MARK GERAGOS STOOD IN FRONT OF ME AND
6 SAID, "JUDGE, SEPTEMBER 18TH WORKS."

7 MR. GERAGOS: THAT WAS BASED ON THEM TURNING OVER
8 DISCOVERY THROUGH THIS DOCUMENT CONTROL. AND THEN I GET
9 HERE A WEEK BEFORE, AND ALL OF A SUDDEN MAGICALLY THERE ARE
10 120 BOXES THAT WEREN'T PRODUCED THROUGH THE DOCUMENT CONTROL.

11 THE ONE THING THAT HAS BEEN SO MEDDLESOME ABOUT THIS
12 ENTIRE DISCOVERY PRODUCTION BY THE GOVERNMENT AND THIS CLAIM
13 OF MISUNDERSTANDING, WHY IN THE WORLD DO I NEED TO GO OVER AND
14 PAY SOME DOCUMENT REPOSITORY 6,000 TO GET DOCUMENTS THAT ARE
15 SUPPOSEDLY THE DISCOVERY IN THIS CASE, HUNDREDS OF THOUSANDS
16 OF PAGES, WHEN ALL THEY'VE GOT TO DO IS SAY, "HERE'S THE
17 120 BOXES. GO AT IT. YOU CAN SCAN IT. YOU CAN DO WHATEVER
18 YOU WANT"? I COULD HAVE BOUGHT THE GREATEST SCANNER OF ALL
19 TIME FOR THE AMOUNT OF MONEY I'M SPENDING AT DOCUMENT CONTROL.

20 WHY DON'T THEY UP FRONT SAY, "THIS IS WHERE THE
21 DISCOVERY IS. YOU WANT IT? GO GET IT"? I DON'T NEED IT TO
22 BE FILED OVER AT SOME DOCUMENT REPOSITORY TO BE TURNED OVER
23 UNLESS THEY KNOW THAT I'M THEN RELYING ON THE DOCUMENTS THAT
24 ARE BEING PRODUCED THERE AS THE DOCUMENTS THAT ARE DISCOVERY.

25 THE COURT: IT'S LATE IN THE DAY FOR ME TO CONSIDER

1 THAT. I WAS WILLING AND TOLD YOU I WAS WILLING AT ANY POINT
2 TO DEAL WITH DISCOVERY ISSUES AS THE CASE WAS BEING PREPARED.
3 YOU'LL REMEMBER THAT AT EACH JUNCTURE, I TOLD YOU "IF
4 SOMETHING COMES UP, YOU DON'T NEED TO WAIT UNTIL THE CALENDAR
5 DATE. CALL AND PUT IT ON CALENDAR. I'LL DEAL WITH IT RIGHT
6 AWAY."

7 THE PURPOSE OF THAT, OF COURSE, WAS MAINTAINING THE
8 TRIAL DATE THAT EVERYONE HAD AGREED UPON. I UNDERSTAND THAT
9 SOMETIMES DISCOVERY DISPUTES COME UP AND THAT THEY CAN BE
10 CONFOUNDERING. I WANTED TO AVOID ANY SUCH PROBLEM. THAT'S WHY
11 I MADE MYSELF WILLING ON A REGULAR DAILY BASIS.

12 TELL ME WHAT YOU HAVE TO SAY, BECAUSE I THINK WE'VE
13 EXHAUSTED THE DISCUSSION ON THIS, ON THE OTHER PORTIONS OF THE
14 MOTION.

15 YOU THINK THE GOVERNMENT COMMITTED MISCONDUCT IN
16 THEIR ARGUMENT?

17 MR. GERAGOS: I DO.

18 THE COURT: IT'S A LITTLE TOUGH WHEN YOU SAY "WHY
19 DIDN'T THEY CALL CONGRESSMAN CUNNINGHAM?" AND THEN THEY ANSWER
20 WHY THEY DIDN'T CALL HIM TO SAY THAT'S MISCONDUCT.

21 MR. GERAGOS: I WOULD AGREE IF WE DIDN'T HAVE A PLEA
22 AGREEMENT WHERE THEY DID CONFER BENEFITS. IT'S FAIR GAME FOR
23 MR. FORGE TO GET UP HERE WHEN I SAY "WHY DIDN'T THEY CALL
24 CUNNINGHAM?" FOR HIM TO GET UP AND SAY "WE DIDN'T CALL
25 CUNNINGHAM BECAUSE HE'S THE MOST CORRUPT GUY. WE, THE

1 GOVERNMENT, WOULD NEVER GIVE HIM ANY BENEFITS. WELL, EXCEPT
2 IN MY BACK POCKET IS THE SENTENCING MEMO WHERE WE DID."

3 THAT, I THINK, IS NOT FAIR PLAY. THAT'S A REAL
4 PROBLEM. I THINK THIS COURT WOULD SAY CLEARLY IF YOU HAD
5 KNOWN THEN WHAT YOU KNOW NOW -- I HAVE MY OWN THEORIES ABOUT
6 IT -- THAT FOR THEM TO GET UP AND SAY "WE'RE NOT GOING TO GIVE
7 BENEFITS," HOW DISINGENUOUS IS THAT?

8 HE HAD NOT BEEN DEBRIEFED AT THAT POINT THROUGH ANY
9 MEANINGFUL AMOUNT. WHEN I WENT BACK AND LOOKED AT THE FILE,
10 IT LOOKS LIKE MR. HALPERN AND ONE OF THE FBI AGENTS IN
11 FEBRUARY, RIGHT BEFORE THE INDICTMENT, FINALLY WENT TO GO
12 VISIT HIM, WHICH IS AFTER HE HAD BEEN SENTENCED AND AFTER THEY
13 HAD CONFERRED BENEFITS.

14 SO WHEN MR. FORGE GETS UP HERE AND SAYS "WELL, WE
15 WOULD NEVER GIVE HIM A BENEFIT BECAUSE HE'S THE MOST CORRUPT
16 GUY IN HISTORY," THEY ASKED THIS COURT TO GO DOWN TWO LEVELS
17 ON THE BASIS OF COOPERATION AND SUBSTANTIAL ASSISTANCE.

18 THE COURT: AT THE END, THOUGH, THEY ASKED ME TO
19 IMPOSE THE STATUTORY MAXIMUM TERM OF TEN YEARS. THAT'S WHAT
20 HE FACED. IF YOUR POINT IS "LOOK, THEY MADE A CHARGE BARGAIN
21 WITH HIM THAT WAS OVERLY GENEROUS," THEN MAYBE YOU'RE RIGHT.

22 MR. GERAGOS: THAT KIND OF FITS IN WITH THE PATTERN.
23 "HERE'S OUR AGREEMENT, WHICH IS WE'LL MAKE A PLEA AGREEMENT
24 WHERE WE GIVE HIM TWO LEVELS. THEN WHEN IT COMES TO COURT,
25 ORALLY WE'LL SOMETHING ELSE. WE'LL SAY 'OKAY, JUDGE. GIVE

1 HIM THE MAX' EVEN THOUGH WE AGREED ALREADY TO GIVE HIM THE
2 BENEFITS."

3 THEY DO THE SAME THING WITH THE JURY. WHY DIDN'T
4 THEY CALL CUNNINGHAM? INSTEAD, THEY COME BACK UP AND SAY, "WE
5 WOULD NEVER GIVE HIM THE BENEFITS." IN FACT, THEY DID GIVE
6 HIM THE BENEFITS. YOU KNOW, HOW DOES ONE RESPOND TO THAT WHEN
7 THAT'S IN THEIR REPLY? SO I THINK THAT THEY'VE GOT A REAL
8 PROBLEM WITH THAT.

9 THE IDEA OF VOUCHING AND SENDING A MESSAGE TO THE
10 TAXPAYERS IS CLEARLY NONSENSE. ALL OF THOSE THINGS, I THINK,
11 LEND TO OR GIVE CREDENCE TO THE FACT THAT THE ARGUMENT CLEARLY
12 HAD CROSSED THE LINE INTO PROSECUTORIAL MISCONDUCT.

13 THE COURT: THEN THE LAST ISSUE WHICH YOU RAISED
14 ABOUT IMPEACHMENT ON A COLLATERAL POINT?

15 MR. GERAGOS: I THINK THE COURT -- I THINK IT'S ON
16 THE RECORD. I'D HAVE TO GO BACK AND CHECK.

17 THE COURT: IT IS.

18 MR. GERAGOS: I THINK THE COURT AT THE TIME
19 RECOGNIZED IT WAS A COLLATERAL MATTER.

20 THE COURT: WELL, IT'S BEEN POINTED OUT TO ME, WHICH
21 I DIDN'T APPRECIATE WHEN I RULED ON IT BECAUSE THERE WERE SOME
22 200 OVERT ACTS ALLEGED, THAT IT WAS ACTUALLY ONE OF THE
23 ALLEGED OVERT ACTS. AND SO FROM THE PURE LEGAL STANDPOINT, IT
24 WASN'T COLLATERAL.

25 NOW, I REMEMBER LOOKING AT YOU AT THE TIME WHEN I

1 ASKED IF YOU WANTED TO CROSS-EXAMINE THIS FELLOW THAT THEY
2 BROUGHT DOWN FROM COEUR D'ALENE OR SPOKANE, AND YOU SORT OF
3 ROLLED YOUR EYES AND YOU MADE A COMMENT IN FRONT OF THE JURY.
4 THE FIRST QUESTION YOU HAD WAS "DID TAXPAYER MONEY PAY TO FLY
5 THIS GUY DOWN JUST TO SAY THAT?" AND THAT WAS SORT OF MY
6 ATTITUDE ABOUT IT. THIS IS A REAL SMALL PIECE OF EVIDENCE IF
7 WORTHY OF CONSIDERATION AT ALL. VERY SMALL.

8 THAT COLORED MY THINKING THAT IT MIGHT BE
9 COLLATERAL. IN A PURE LEGAL SENSE, THEY ALLEGED IT IN AN
10 OVERT ACT. IT'S NOT COLLATERAL. IT WASN'T IMPEACHMENT ON A
11 COLLATERAL POINT. MR. WILKES DENIED IT.

12 NOW, IN THE GREAT SCHEME OF THINGS, DID THE CASE
13 TURN ON WHETHER RANDY DUKE CUNNINGHAM WAS SHOOTING A MACHINE
14 GUN AT COEUR D'ALENE WITH MR. WILKES AND THE OTHERS OR NOT? I
15 DON'T THINK SO. I DON'T THINK SO. REALLY, WHAT I'M TALKING
16 ABOUT HERE IS TACTICS. I THINK YOU APPRECIATED THAT AT THE
17 TIME. SO NEED WE GO ANY FURTHER WITH THAT? I DON'T THINK SO.

18 MR. GERAGOS: I ALSO WOULD SUBMIT THAT I'M SURE THAT
19 THEY HAVE ASKED MR. CUNNINGHAM IF HE WAS THERE, AND THAT'S
20 NEVER BEEN DISCLOSED. AND IF THEY KNEW THAT HE WAS NOT THERE
21 AND STILL BROUGHT DOWN A WITNESS, IF THEY THOUGHT IT WAS
22 IMPORTANT ENOUGH -- YOU'RE TELLING ME IF THEY THOUGHT IT WAS
23 IMPORTANT ENOUGH TO FLY SOMEBODY DOWN HERE, THAT THEY COULDN'T
24 WALK ACROSS THE STREET WHEN HE WAS HERE AND ASK HIM "BY THE
25 WAY, DID YOU GO SHOOTING?"

COMPUTER-AIDED TRANSCRIPTION

1 THE COURT: I DIDN'T AGREE WITH THE DECISION TO PUT
2 THAT WITNESS ON. FRANKLY, I THOUGHT IT WAS KIND OF A WASTE
3 OF TIME AND OVER THE TOP. IT WAS AN OVERT ACT. THEY WANTED
4 TO IMPEACH ON THAT POINT. YOU'RE MORE CYNICAL IN YOUR
5 ATTITUDE TOWARD THE PROSECUTORS THAN I AM. I DON'T HAVE THAT
6 DEGREE OF CYNICISM EITHER TOWARD HIM OR TOWARD YOU.

7 I DON'T THINK THAT THEY WOULD KNOWINGLY CREATE AN
8 INFERENCE WHEN THEY KNEW CUNNINGHAM WAS GOING TO SAY, "I
9 WASN'T ALONG." I DON'T BELIEVE THAT FOR A SECOND. I DON'T
10 KNOW YOU'D DO THAT, AND I DON'T THINK THEY DID THAT. THAT'S
11 TANTAMOUNT TO PUTTING ON FALSE EVIDENCE.

12 MR. GERAGOS: I JUST QUESTION WHY SO MUCH WAS MADE
13 OF THE SHOOTING INCIDENT, AND THERE'S NOT A SINGLE REPORT OR
14 DOCUMENT THAT REFLECTS WHETHER SOMEBODY ASKED THE GUY "WERE
15 YOU THERE?"

16 THE COURT: WHAT WE'RE TALKING ABOUT HERE IS REALLY
17 TRIAL STRATEGY AND TACTICS. AND IF YOU'RE ASKING ME AS A
18 TACTICAL MATTER DO I AGREE WITH YOU THAT IT WAS WORTH THE
19 TIME, I DO AGREE WITH YOU. IT WASN'T WORTH THE TIME. BUT WAS
20 IT A LEGAL ERROR TO SAY IT WAS IMPEACHMENT ON A COLLATERAL
21 MATTER TO LET THIS FELLOW COME DOWN AND SAY, "YEAH, OUR
22 RECORDS SHOW CUNNINGHAM WAS HERE"? I DON'T THINK SO. THEY
23 ALLEGED IT AS AN OVERT ACT. MR. WILKES DENIED IT. THEY WERE
24 ENTITLED TO REBUT ON THAT POINT.

25 IT WAS A SMALL POINT. AS I SAID, I DON'T THINK IT

1 WAS WORTH THE TIME. IT WASN'T WORTH THE PLANE TICKET FROM
2 SPOKANE, IN MY JUDGMENT. THAT'S THEIR DECISION TO MAKE.
3 THEY'RE IN CHARGE OF PUTTING THEIR CASE ON. BUT I THINK AS
4 A LEGAL MATTER, THE POINT THAT YOU MAKE ABOUT ALLOWING
5 IMPEACHMENT ON A COLLATERAL POINT IS INCORRECT. I THOUGHT
6 THAT AT THE TIME. BUT WHEN I WAS MADE AWARE THAT IT WAS
7 ACTUALLY ONE OF THE OVERT ACTS, I THINK THAT ANSWERED THE
8 LEGAL CHALLENGE THAT YOU MAKE.

9 ANYTHING ELSE?

10 MR. GERAGOS: NO, NOTHING ELSE BESIDES WHAT'S
11 ALREADY IN THE PAPERWORK.

12 THE COURT: WHO SPEAKS FOR THE UNITED STATES ON THE
13 MOTION FOR A NEW TRIAL?

14 MR. FORGE: I DO, YOUR HONOR.

15 YOUR HONOR, I'LL KEEP MY COMMENTS BRIEFS BECAUSE, AS
16 THE COURT HAS ALREADY POINTED OUT, YOU RECEIVED SIGNIFICANT
17 BRIEFING ON ALL THESE ISSUES SAVE ONE.

18 THE ONE ISSUE I DON'T THINK YOU RECEIVED ANY
19 BRIEFING ON BECAUSE IT WASN'T RAISED IN THE DEFENSE PAPERS IS
20 THIS ISSUE THAT AS OF THIS MORNING, IT'S NOW THE PARAMOUNT
21 ISSUE, WHICH IS THE PARKVIEW ISSUE.

22 JUST TO CLARIFY, IN THE DOCUMENTS THAT HAVE BEEN
23 SUBMITTED TO THE COURT THAT ARE PART OF THE PUBLIC RECORD,
24 THEY SPEAK FOR THEMSELVES AND WILL BACK UP WHAT I'M SAYING.
25 THERE IS NO INDICATION THAT THOMAS KONTOGIANNIS ENGAGED IN A

1 FRAUD SCHEME AGAINST INDIVIDUAL INVESTORS ALONG THE LINES OF
2 THE TYPE OF ARGUMENT THAT MR. GERAGOS WAS MAKING AT TRIAL AND
3 IS MAKING NOW.

4 THERE'S NO QUESTION HE'S INVOLVED IN WIDE-RANGING
5 FRAUD. IT'S BANK FRAUD. THAT'S BEEN WELL-DOCUMENTED. AND
6 ALL OF THOSE ALLEGATIONS WERE AVAILABLE TO MR. GERAGOS WELL IN
7 ADVANCE OF TRIAL. AND AS YOUR HONOR WAS POINTING OUT, NONE OF
8 THEM LEAD TO A DEFENSE FOR MR. WILKES. THE FACT THAT
9 MR. KONTOGIANNIS WAS DEFRAUDING BANKS OF TENS OF MILLIONS OF
10 DOLLARS BEARS NO RESEMBLANCE WHATSOEVER TO THE ARGUMENT THAT
11 MR. GERAGOS WANTED TO MAKE WITH RESPECT TO AN INDIVIDUAL WIRE
12 TRANSFER THAT MR. WILKES SENT TO MR. KONTOGIANNIS. I DID WANT
13 TO CLARIFY THAT POINT.

14 REGARDING THE BOXES AT THE FBI, AS YOUR HONOR
15 POINTED OUT, MR. GERAGOS, MR. WILKES, AND THE DEFENSE
16 TEAM DECLINED TO CONTINUE LOOKING AT THOSE BOXES AS OF
17 OCTOBER 19TH. AND THAT'S IT. FROM THAT POINT FORWARD, THEY
18 DIDN'T GO BACK. SO AGAIN, TO PUT IN CONTEXT MR. GERAGOS'S
19 ARGUMENT, ALL THESE DOCUMENTS HE'S TALKING ABOUT NOW ARE
20 DOCUMENTS THAT THEY POSSESSED PRIOR TO THAT DATE. IN OTHER
21 WORDS, THEY'RE NOT DOCUMENTS THAT THEY OBTAINED FROM THE
22 WAREHOUSE AFTER THAT TIME. THEY ALREADY HAD THE DOCUMENTS
23 THAT THEY'RE TALKING ABOUT RIGHT NOW.

24 AS A MATTER OF FACT, LETTERS WERE SENT TO
25 MR. GERAGOS IN FEBRUARY AND IN MARCH OF 2007 EXPLAINING TO HIM

1 THAT THE SEARCH WARRANT MATERIALS WERE AVAILABLE. THEY SIMPLY
2 WAITED UNTIL SEPTEMBER TO LOOK AT THEM. BUT AGAIN, THESE ARE
3 DOCUMENTS LARGELY THAT WERE TAKEN FROM MR. WILKES'S BUSINESS.
4 PRESUMABLY, HE WAS AWARE OF WHAT WAS THERE. AND PRESUMABLY,
5 THAT WAS ONE OF THE REASONS WHY HE DECIDED THAT "THERE'S NO
6 POINT LOOKING THROUGH THOSE DOCUMENTS ANYMORE. I HAVE A
7 PRETTY GOOD IDEA OF WHAT WAS THERE. I KNOW THERE'S NOTHING
8 ELSE THAT'S HELPFUL." SO THEY DECLINED TO CONTINUE LOOKING.

9 THE COURT: IS THE GOVERNMENT'S POSITION WITH
10 RESPECT TO THE DISCOVERY THAT ALL OF IT WAS AVAILABLE TO BE
11 REVIEWED WELL BEFORE TRIAL?

12 MR. FORGE: YES.

13 THE COURT: AND HAD BEEN FOR SOME TIME?

14 MR. FORGE: YES.

15 THE COURT: MR. GERAGOS HAS CONFESSED IN THE PAST
16 TO SOME MISUNDERSTANDING ABOUT JUST WHAT WAS CONTAINED. AND
17 MS. CHU, I THINK, ADDRESSED THAT WITH ME AT SOME POINT.

18 THERE WERE LETTERS SENT TO MR. GERAGOS SAYING
19 "HERE'S WHAT'S THERE. THIS IS ALL AVAILABLE," AND IT WAS IN
20 BOXES READY TO BE SCANNED, READY TO BE LOOKED AT?

21 MR. FORGE: YES, YOUR HONOR. WE DID NOT PUT IN THE
22 LETTERS THE EXACT NUMBER OF BOXES. BUT WE CERTAINLY SAID THE
23 SEARCH WARRANT LOCATIONS, AND THE ADCS HEADQUARTERS WAS ONE OF
24 THOSE. THAT WAS MADE CLEAR IN LETTERS. I BELIEVE IN FEBRUARY
25 AND MARCH -- I KNOW FOR CERTAIN IN MARCH OF 2007, THAT WAS

1 CLEAR.

2 I THINK THE POINT -- PROBABLY THE BIGGEST POINT FROM
3 A LEGAL AND PRACTICAL PERSPECTIVE REGARDING THESE DOCUMENTS,
4 WHEN YOU ACTUALLY GET DOWN TO THE NITTY-GRITTY OF WHAT'S IN
5 THOSE DOCUMENTS AND WE ACTUALLY LOOK TO WHAT THEY ATTACHED AS
6 EXHIBITS, IT'S NOTHING OTHER THAN POTENTIAL IMPEACHMENT. AND
7 EVEN THE POTENTIAL FOR IMPEACHMENT IS HIGHLY SUSPECT. MANY OF
8 THESE AREAS, I AGREE WITH YOUR HONOR. MR. GERAGOS WAS A VERY
9 FORMIDABLE FOE AT TRIAL.

10 THE COURT: HE HAD YOU ON THE ROPES FOR THE FIRST
11 TEN WITNESSES.

12 MR. FORGE: HE HAD US WORRIED. THERE'S NO QUESTION
13 ABOUT THAT. IF YOU LOOK AT THOSE DOCUMENTS THAT ARE CONTAINED
14 IN THOSE EXHIBITS, THERE'S NOTHING THOSE DOCUMENTS WOULD
15 HAVE ADDED TO WHAT WERE OTHERWISE FULLY EFFECTIVE
16 CROSS-EXAMINATIONS TO THE POINT THEY COULD HAVE BEEN
17 EFFECTIVE. AT THE END OF THE DAY, THERE WAS NO SMOKING GUN
18 FOR THE DEFENSE BECAUSE MR. WILKES IS, IN FACT, GUILTY. AND
19 THERE WAS NO SMOKING GUN BECAUSE IT JUST DOESN'T EXIST, NOT
20 BECAUSE THERE WASN'T TIME TO OBTAIN THAT.

21 THE DOCUMENTS THAT THEY'RE POINTING TO NOW, NOT ONLY
22 WOULD THEY NOT QUALIFY AS, QUOTE/UNQUOTE, "NEWLY DISCOVERED
23 EVIDENCE UNDER RULE 33(A)" BECAUSE THEY WEREN'T NEWLY
24 DISCOVERED -- THEY WERE IN HIS POSSESSION -- BUT THEY ALSO
25 WOULDN'T QUALIFY FOR CONSIDERATION FOR A MOTION FOR NEW TRIAL

1 BECAUSE THEY DON'T DO ANYTHING MORE THAN ARGUABLY IMPEACH A
2 FEW WITNESSES.

3 AND EVEN THE IMPEACHMENT VALUE, GOING BACK TO
4 MR. GERAGOS'S POINT, IF YOU TAKE THAT \$525,000 WIRE TRANSFER
5 AS BEING ONE OF THE MOST PARAMOUNT ISSUES AT TRIAL -- AND I
6 THINK IT WAS ONE OF THE MOST PARAMOUNT ISSUES AT TRIAL -- NONE
7 OF THOSE DOCUMENTS SPEAK TO THAT ISSUE. SO I THINK, AGAIN,
8 YOU'VE READ ALL THE BRIEFS. IF YOU HAVE SPECIFIC QUESTIONS,
9 I'M HAPPY TO ADDRESS ANY SPECIFIC CONCERNS. BUT I THINK IT'S
10 BEEN ADEQUATELY BRIEFED.

11 THE COURT: THANK YOU, MR. FORGE.

12 I'LL ADDRESS THE MOTIONS FOR A NEW TRIAL IN ORDER.

13 FIRST, REGARDING THE LACK OF TIME TO PREPARE AND THE
14 NEED FOR ADDITIONAL CONTINUANCES, I'VE ADDRESSED THESE FACTORS
15 BEFORE, MOST PARTICULARLY AT THE TIME THE REQUEST FOR A
16 CONTINUANCE WAS FIRST MADE BEFORE THE SEPTEMBER 18TH TRIAL
17 DATE.

18 THE 9TH CIRCUIT LOOKS AT FOUR FACTORS IN DETERMINING
19 WHETHER A COURT ABUSES ITS DISCRETION IN DENYING A MOTION TO
20 POSTPONE A TRIAL.

21 FIRST, THE EXTENT OF DILIGENCE ON THE PART OF THE
22 DEFENSE LAWYER TO READY HIS DEFENSE PRIOR TO TRIAL. I'VE
23 SPOKEN TO THAT HERE. I AGREE WITH WHAT MR. FORGE SAID. THESE
24 DOCUMENTS THAT ARE REFERRED TO, WHETHER THEY'RE TERABYTES,
25 MEGABYTES, THEY WERE AVAILABLE. THEY'VE BEEN AVAILABLE.

COMPUTER-AIDED TRANSCRIPTION

1 NOW, IT MAY BE OWING TO A MISUNDERSTANDING THAT
2 MR. GERAGOS DIDN'T KNOW THE SCOPE OF THEM, BUT THERE'S A
3 SIMPLE WAY TO CLEAR UP THAT MISUNDERSTANDING. GO LOOK AT THE
4 THINGS. SEND THE LAWYERS THAT ARE ASSISTING YOU TO GO LOOK AT
5 THESE AND GO THROUGH THOSE. I FIND THAT THERE WAS PLENTY OF
6 TIME AND PLENTY OF NOTICE FROM MR. GERAGOS TO DO THIS.

7 LOOK, THE TRUTH OF THE MATTER IS WITH THIS ISSUE
8 ABOUT EXTENT OF DILIGENCE IS THAT MR. GERAGOS IS A HIGHLY
9 SOUGHT-AFTER DEFENSE COUNSEL.

10 I MARVELED, MR. GERAGOS, IN THE MIDDLE OF THIS TRIAL
11 AND ALL THAT WAS GOING ON AND AS COMPLICATED, I WENT HOME ONE
12 NIGHT EXHAUSTED MYSELF AND GOT INTO MY EASY CHAIR IN MY DEN.
13 AND I TURNED ON THE NEWS, AND I'M FLIPPING AROUND, AND HERE'S
14 MR. GERAGOS ON LARRY KING LIVE THAT NIGHT.

15 MR. GERAGOS: I THINK IT WAS TAPED.

16 THE COURT: IT SPEAKS TO THE FACT THAT YOU'RE SPREAD
17 VERY THIN. THERE'S HIGH DEMAND FOR YOU. I HAVE NO WAY TO
18 CONTROL THAT OTHER THAN TO SET FIRM TRIAL DATES AND TELL YOU,
19 AND I DID THAT. ONE LOOKING AT THE RECORD WILL SAY YOU WERE
20 ON NOTICE THAT THIS CASE WAS GOING. I MADE THAT LOUD AND
21 CLEAR. IT WAS LIKE A SIREN GOING OFF.

22 IN MAY WHEN YOU STOOD IN FRONT OF ME AND SAID "I CAN
23 BE READY IN SEPTEMBER," I COUNTED ON THAT REPRESENTATION. OF
24 COURSE, THE RECORD WILL SHOW THAT THE TRIAL DATE WAS ADJUSTED
25 BASED ON SOME LAST-MINUTE DEVELOPMENTS THAT HAD NOT OCCURRED

1 TO YOU AT THE TIME YOU MADE THAT REPRESENTATION.

2 I THINK ONE REVIEWING THIS RECORD AND BEING
3 OBJECTIVE ABOUT IT WILL SAY, "THE JUDGE DID BEND OVER
4 BACKWARDS TO ACCOMMODATE MR. GERAGOS'S SCHEDULE AND
5 MR. WILKES'S NEED TO BE READY AND TO HAVE A FAIR DEFENSE
6 HERE."

7 I POSTPONED THE CASE. AS I SAID, I WAS BUFFETED
8 BECAUSE THERE WERE OTHER CONSIDERATIONS. WE SENT OUT THE 750
9 18-PAGE QUESTIONNAIRES. ALL THE PROSPECTIVE JURORS WERE
10 GIVING OF THEIR TIME TO FILL THOSE THINGS OUT. WE WERE GOING
11 TO HAVE TO GO THROUGH THAT ALL AGAIN UNLESS THE CONTINUANCE
12 WAS CONFINED WITHIN THE PERIOD OF TIME SCREENING THAT HAD BEEN
13 CONTEMPLATED.

14 SO I DO FIND THAT IF THERE IS A PROBLEM HERE, IT'S
15 Owing TO A LACK OF DILIGENCE ON THE PART OF COUNSEL IN LOOKING
16 AT THE MATERIAL THAT WAS AVAILABLE AND COULD HAVE BEEN
17 REVIEWED.

18 I CONFESS TO YOU, MR. GERAGOS, I DIDN'T HAVE TO DEAL
19 WITH TERABYTES. I NEVER HAD A CASE WITH AS MUCH PAPER AS
20 THIS. BUT EIGHT MONTHS IS A LONG TIME TO GET READY FOR A
21 CASE, PARTICULARLY WHEN THE DEFENSE IS CRYSTALLIZED AS IT WAS
22 OBVIOUSLY IN THIS CASE.

23 SO I FIND THAT THAT FACTOR OBVIOUSLY MILITATES
24 AGAINST GRANTING THE MOTION FOR A NEW TRIAL.

25 HOW LIKELY IS IT THAT THE NEED FOR A CONTINUANCE

1 COULD HAVE MET -- COULD HAVE BEEN MET IF THE CONTINUANCE WAS
2 GRANTED? THIS SEEMS TO DOVETAIL WITH THE LAST CONSIDERATION.
3 MANY OF THE THINGS THAT YOU POINT TO AS PREJUDICE TO
4 MR. WILKES I FIND ARE REALLY TRIFLING. YOU'VE GONE THROUGH
5 AND GIVEN A LIST OF WITNESSES WHO COULD HAVE BEEN FURTHER
6 IMPEACHED, AMONG THEM MITCH WADE.

7 I DON'T KNOW, MR. GERAGOS, WHAT MORE YOU COULD HAVE
8 DONE TO IMPEACH MITCH WADE. LUCIFER HIMSELF WOULDN'T HAVE
9 FARED ANY BETTER HERE. HERE'S A GUY WHERE IT WAS FAIRLY
10 EVIDENT TO ME -- I DON'T THINK HE'S BEEN SENTENCED YET -- HE'S
11 GOING TO GET SOME KIND OF SWEETHEART SENTENCE. THAT WAS
12 CLEAR. HE ADMITTED AS MUCH. HE'S OUT ON O.R. RELEASE, HIS
13 OWN RECOGNIZANCE. MEANWHILE, MR. WILKES AND OTHERS ARE EITHER
14 DETAINED OR \$2 MILLION BAIL.

15 THIS GUY, IT'S SHOWN BY YOUR CROSS-EXAMINATION, TOOK
16 THIS THING TO AN ART FORM. HE WAS DOING MORE THAN MR. WILKES,
17 AS FAR AS I'M CONCERNED. HE'S HANDING BAGS OF CASH TO
18 CONGRESSMAN CUNNINGHAM.

19 SO THE OTHER POINTS THAT YOU'VE RAISED, "I WOULD
20 HAVE IMPEACHED HIM ON THAT," I THINK, FRANKLY, THAT WOULD HAVE
21 JUST UNDERCUT YOUR EFFORTS. YOU HIT HIM WITH THE HARDEST
22 BLOWS THAT WERE AVAILABLE TO HIT HIM WITH. I'VE ANALYZED THIS
23 WAS A GUY THAT USED TO TRY CASES AND KNOWS ABOUT CABINING
24 IMPEACHMENT SO YOU DON'T WATER DOWN YOUR MAIN POINTS. YOU HIT
25 HIM WITH HARD BLOWS.

1 THE SAME IS TRUE OF THESE OTHER WITNESSES. MOST OF
2 THIS STUFF, EVEN IF IT'S CORRECT, I THINK IS REALLY JUST
3 ALMOST COLLATERAL IMPEACHMENT. IT'S CLEAR TO ME THAT SOME OF
4 THE WITNESSES WOULD HAVE DENIED THE ALLEGATIONS OR THE
5 IMPLICATIONS YOU SAY APPEAR TO YOU FROM REVIEWING THESE
6 PAPERS.

7 ONE OF THE FELLOWS, THIS KRATZ FELLOW, THAT WAS PUT
8 TO HIM IN THE GRAND JURY. "WHAT ABOUT THIS REPORT?"

9 HE SAID, "I NEVER SAID THAT."

10 I THINK THAT WOULD HAVE BEEN THE SAME RESULT HERE.

11 SO TO WHAT END DO I GRANT THE MOTION FOR A NEW
12 TRIAL, SO KRATZ CAN BE ASKED A QUESTION AND DENY THE
13 IMPLICATION THAT YOU THINK IS PREGNANT IN THESE DOCUMENTS?

14 I FIND THAT THE NEED FOR A CONTINUANCE WOULD NOT
15 HAVE -- OR THE CONCERNS RAISED WOULD NOT HAVE BEEN MET EVEN IF
16 HAD A FURTHER CONTINUANCE BEEN GRANTED.

17 THE EXTENT TO WHICH THE CONTINUANCE WOULD HAVE
18 INCONVENIENCED THE COURT AND OPPOSING PARTY, INCLUDING ITS
19 WITNESSES, I'VE SPOKEN TO THAT ALREADY. LOOK, I'M HERE EVERY
20 DAY. AND IF IT WASN'T THIS CASE, I WOULD HAVE BEEN TRYING
21 ANOTHER CASE. I MADE THAT VERY CLEAR. IT WASN'T MY PERSONAL
22 CONVENIENCE AT ALL. IN FACT, I THINK I TRIED A NUMBER OF
23 CASES AFTER THE WILKES VERDICT IN THIS CASE BEFORE THE
24 CHRISTMAS HOLIDAY. SO MY PERSONAL CONVENIENCE WAS NOT PART OF
25 THIS.

COMPUTER-AIDED TRANSCRIPTION

1 WHAT WAS PART OF THIS WAS, AS I SAID, CO-COUNSEL FOR
2 MR. GRANGER --

3 MR. FORGE: MR. LEVITT.

4 THE COURT: -- HE HAD A TRIAL SET IN BROOKLYN,
5 NEW YORK IN NOVEMBER. AT THE TIME I MADE THE DECISION, IT
6 TURNED OUT LATER THAT HE WAS SEVERED. BUT AT THE TIME I MADE
7 THE DECISION, MR. MICHAEL'S CASE HAD NOT BEEN SEVERED.

8 MR. LEVITT WAS CO-COUNSEL. AND HE SAID, "JUDGE, YOU'VE PUT ME
9 IN A SPOT HERE. ANOTHER FEDERAL JUDGE IN BROOKLYN, NEW YORK
10 HAS SET A FIRM TRIAL DATE. I'M SUPPOSED TO GO." AS I SAID, I
11 WOULDN'T DO THAT. I WOULD NOT SUPERIMPOSE MYSELF OR MY
12 SCHEDULE ON SOME OTHER JUDGE'S SCHEDULE WHEN A FIRM TRIAL DATE
13 HAS BEEN SET. SO I WAS BUFFETED BY THAT.

14 AND AS I RECALL -- AND I THINK THE TRANSCRIPT WILL
15 BEAR THIS OUT -- YOU UNDERSTOOD THE DILEMMA THAT THAT CREATED
16 FOR ALL OF US. AND IT WAS THE PRODUCT OF A COMPROMISE THAT
17 LED TO A FURTHER TWO-WEEK CONTINUANCE AT THAT POINT. SO THIS
18 WASN'T A MATTER OF THE COURT STICKING STRICTLY TO A DATE THAT
19 HAD BEEN SET. I ADJUSTED THAT DATE. ADDITIONAL ADJUSTMENTS
20 WERE MADE THROUGH THE TIME OF TRIAL. THE GOVERNMENT OBJECTED
21 TO THE CONTINUANCE. I DON'T KNOW IF MR. HALPERN GAVE YOU A
22 COUNTER-INDICATION EARLIER. BUT WHEN IT CAME TO COMING IN
23 FRONT OF ME, THEY OBJECTED TO THE CONTINUANCE.

24 SO I FIND THAT THE ACCOMMODATION THAT WAS GIVEN AND
25 WAS AGREED TO, FRANKLY, BY YOU AT THE TIME REALLY ADDRESSES

1 THE THIRD FACTOR THE 9TH CIRCUIT LOOKS TO.

2 THEN THE EXTENT TO WHICH MR. WILKES SUFFERED HARM
3 BECAUSE OF THE CONTINUANCE, AS I SAID, THIS CASE DID NOT TURN
4 ON THE ADDITIONAL IMPEACHMENT THAT YOU CLAIM IS IN THOSE
5 DOCUMENTS. IT WOULDN'T HAVE MADE A DIFFERENCE, IN MY
6 JUDGMENT. THE WITNESSES WERE THOROUGHLY IMPEACHED WITH
7 PROBLEMS EITHER IN THEIR TESTIMONY OR INCONSISTENT STATEMENTS
8 OR THINGS THAT THEY HAD DONE, WHICH I THINK GAVE A VERY CLEAR
9 AND OBJECTIVE VIEW TO THE JURY THAT TRIED THIS CASE OF WHO THE
10 WITNESS WAS AND WHAT HE'D SAID IN THE PAST.

11 I'VE LOOKED IN PARTICULAR AT THE ARGUMENT YOU MAKE
12 ABOUT EACH WITNESS. AND I FIND WITH RESPECT TO ALL OF THEM,
13 THAT IT WOULDN'T HAVE MADE ANY DIFFERENCE HERE. IT DIDN'T
14 PREJUDICE MR. WILKES. AS I SAID, I MARVELED AT THE FIRST TEN
15 WITNESSES. I THOUGHT "BOY, THE GOVERNMENT IS IN FOR IT HERE
16 BECAUSE THESE FIRST TEN PEOPLE THEY'VE CALLED HAVEN'T HELPED
17 THEM VERY MUCH. MR. GERAGOS HAS EITHER TURNED THEM AROUND TO
18 SAY SOMETHING FAVORABLE ABOUT MR. WILKES OR HE'S NEUTRALIZED
19 THEM." NOW, IT GOT BETTER FOR THEM AS THE CASE WENT ON. THE
20 EVIDENCE CONTINUED TO POUR IN TO AN AVALANCHE OF EVIDENCE
21 AGAINST MR. WILKES.

22 WITH ALL RESPECT TO OUR DIFFERENCE OF OPINION,
23 MR. GERAGOS, I DENY THE NEW TRIAL MOTION BASED ON A FAILURE TO
24 CONTINUE THE CASE. I THINK THAT THERE WAS PLENTY OF TIME,
25 PLENTY OF CONSIDERATION GIVEN TO THE CONCERNs THAT YOU'VE

1 RAISED. AND AT THE END, THERE WAS ADEQUATE -- MORE THAN
2 ADEQUATE PREPARATION AND THAT YOU PERFORMED SKILLFULLY IN
3 REPRESENTING MR. WILKES.

4 LET ME TURN TO THE ARGUMENT ABOUT THE GOVERNMENT'S
5 STATEMENTS DURING THE COURSE OF THE TRIAL AND WHETHER THEY
6 AMOUNTED TO CROSSING THE LINE IN BEING IMPERMISSIBLE
7 STATEMENTS.

8 I, LIKEWISE, DENY THAT MOTION. I HAVE REVIEWED IN
9 CONTEXT ALL OF THE ALLEGED MISCONDUCT STATEMENTS THAT
10 SUPPOSEDLY AMOUNTED TO VOUCHING OR THAT EJECTED MATTERS
11 OUTSIDE THE RECORD. I SPECIFICALLY ADOPT THE PORTIONS OF THE
12 TRANSCRIPT AND THE COMPARISON OF THOSE PORTIONS TO THINGS THAT
13 WERE SAID THAT'S CONTAINED IN THE GOVERNMENT'S RESPONSE OF
14 OPPOSITION TO YOUR MOTION FOR A NEW TRIAL BEGINNING AROUND
15 PAGE 11 AND CONTINUING ON THROUGH PAGE 18.

16 MUCH OF THE RESPONSE AND THE REBUTTAL ARGUMENT WAS
17 INVITED BY COMMENTS YOU MADE. YOU CAN HARDLY EXPECT THAT THE
18 GOVERNMENT IS NOT GOING TO SPEAK ABOUT WHY THEY DIDN'T CALL
19 CUNNINGHAM WHEN YOU STAND IN FRONT OF THE JURY AND SAY, "WHY
20 DIDN'T THEY CALL CUNNINGHAM?" THEY HAVE A RIGHT TO ANSWER AT
21 THAT POINT. IT'S DIFFERENT FROM THEM SAYING, "WE DIDN'T CALL
22 HIM BECAUSE THUS AND SO OUTSIDE THE RECORD."

23 I FIND NO MISCONDUCT IN THIS CASE, NO VOUCHING. THE
24 GOVERNMENT STRUCK HARD BLOWS HERE, TO BE SURE, BUT NO FOULS IN
25 MY JUDGMENT. TO THE EXTENT THERE WAS A PROBLEM, YOU OBJECTED.

COMPUTER-AIDED TRANSCRIPTION

1 AND I RECALL A COUPLE OF TIMES SUSTAINING THE OBJECTIONS AND
2 TELLING THE JURY TO DISREGARD STATEMENTS AND SORT OF
3 CHASTENING THE PROSECUTORS TO STICK TO THINGS THAT WERE
4 RELEVANT AND PROPER. THAT HAPPENED, TOO. I'VE LOOKED
5 INDEPENDENTLY AT THE TRANSCRIPT.

6 SO TO THE EXTENT THERE WAS ANY IMPROPER ARGUMENT, IT
7 WAS CURED BY THE COURT'S PROMPT RESPONSE TO THE OBJECTION AND
8 TO THE ADMONITIONS GIVEN TO THE JURY.

9 I'VE LOOKED AT EACH AND EVERY ONE OF THE ARGUMENTS
10 THAT YOU'VE MADE. IN CONTEXT, I FIND THAT NONE AMOUNTED TO
11 PROSECUTORIAL MISCONDUCT. NONE AMOUNTED TO ANY KIND OF
12 PROBLEM THAT DEPRIVED MR. WILKES OF A FAIR TRIAL.

13 MOREOVER, IN MAKING THIS JUDGMENT, THE STANDARD, OF
14 COURSE, IS THAT MR. WILKES HAS TO SHOW THAT HE WAS SOMEHOW
15 PREJUDICED BY IT. WE DIDN'T HAVE A RUSH TO JUDGMENT HERE. WE
16 DIDN'T HAVE A JURY THAT WENT OUT AND CAME BACK AN HOUR LATER
17 OBVIOUSLY INFLAMED BY IMPASSIONED ARGUMENTS. WE HAD A JURY
18 THAT SPENT FOUR INTENSE DAYS DELIBERATING, SOMETIMES MORE THAN
19 EIGHT HOURS. I WAITED FOR THEM TO BUZZ, AND SOMETIMES THEY
20 DIDN'T BUZZ UNTIL AFTER 5:00 EVEN THOUGH THE USUAL QUITTING
21 TIME WAS 4:30.

22 MY TAKE ON THAT FOUR INTENSE DAYS OF DELIBERATION IS
23 THEY WENT CAREFULLY THROUGH ALL THE EVIDENCE, AND THEY WEREN'T
24 INFLAMED BY SOMETHING THAT YOU SAID OR SOMETHING THAT THE
25 GOVERNMENT SAID. THE OBJECTIVE RECORD REALLY BELIES SUCH A

COMPUTER-AIDED TRANSCRIPTION

1 CONCLUSION.

2 SO AGAIN, WITH RESPECT, I DENY THE MOTION FOR A NEW
3 TRIAL ON THAT BASIS.

4 WHAT'S LEFT IS THIS ISSUE THAT WE TALKED ABOUT,
5 IMPEACHMENT ON THE COLLATERAL POINT. WHILE I AGREED WITH YOU
6 AT THE TIME, THAT IT WAS A COLLATERAL POINT, I'VE BEEN
7 DISABUSED OF THAT. IT WAS ONE OF THE OVERT ACTS. ONE OF THE
8 OVERT ACTS ALLEGED THAT MR. CUNNINGHAM WENT SHOOTING WITH A
9 MACHINE GUN AND THAT THAT WAS PAID FOR AND THAT THAT WAS PART
10 OF WHAT HE WAS GIVEN BY MR. WILKES.

11 NOW, IT'S NOT COLLATERAL. IT'S THERE. IT'S
12 ALLEGED. IT'S ONE OF THE OVERT ACTS THAT THEY NEEDED TO
13 PROVE. MR. WILKES DENIED THAT. HE DENIED MR. CUNNINGHAM WAS
14 ALONG.

15 WAS IT A BIG POINT IN THE COSMIC UNIVERSE? I DON'T
16 THINK SO. THAT'S WHY YOU ROLLED YOUR EYES AT ME AT THE TIME.
17 THAT'S WHY YOU MADE THE STATEMENT TO THE JURY "DID TAXPAYER
18 MONEY PAY TO HAVE THIS GUY COME DOWN AND SAY THAT?" I DIDN'T
19 GET IT EITHER. HAD I BEEN IN THE GOVERNMENT'S SHOES, I
20 WOULDN'T HAVE CHOSEN TO TRY TO REBUT ON THAT POINT. THEY DID.
21 THEY HAD A RIGHT TO. THEY OBVIOUSLY DISAGREED WITH YOUR
22 JUDGMENT AND MINE ON THAT.

23 BUT I THINK THE IMPEACHMENT WAS PROPER AND NOT
24 COLLATERAL. IN ANY EVENT, AT THE END OF THE DAY, NONE OF THAT
25 AFFECTED THE VERDICT HERE. IT'S JUST NOT A FAIR STATEMENT TO

COMPUTER-AIDED TRANSCRIPTION

1 SAY THAT THAT LITTLE INCIDENT HAD SOME MOMENTOUS IMPACT ON THE
2 VERDICT. IT DID NOT.

3 SO THE COURT, HAVING READ AND CONSIDERED ALL OF THE
4 ARGUMENTS, DENIES THE MOTION FOR A NEW TRIAL. MR. WILKES WAS
5 FAIRLY TRIED. HE GOT A FAIR TRIAL AS I PROMISED HIM HE WOULD.
6 THAT MOTION IS DENIED.

7 I THINK NOW WE SHOULD TURN TO THE MATTER OF
8 SENTENCING.

9 DO YOU AGREE, MR. GERAGOS, THAT THAT'S NEXT IN
10 LOGICAL ORDER?

11 MR. GERAGOS: YES, YOUR HONOR. I THINK WE NEED TO
12 DEAL WITH THE PSR OBJECTIONS.

13 THE COURT: LET ME FIRST RECITE WHAT I HAVE READ AND
14 CONSIDERED IN CONNECTION WITH SENTENCING.

15 IN SHORT, ALL THIS STUFF IN FRONT OF ME HAS TO DO
16 WITH SENTENCING. I'VE READ AND CONSIDERED ALL OF IT. I SPENT
17 THE GOOD PART OF THIS WEEKEND GOING OVER EVERYTHING A SECOND
18 TIME.

19 BUT TO BEGIN WITH, I'VE READ THE PRE-SENTENCE REPORT
20 THAT WAS FILED IN THIS CASE.

21 YOU'VE FILED OBJECTIONS TO THE PRE-SENTENCE REPORT.
22 I'VE READ AND CONSIDERED THOSE.

23 THE GOVERNMENT HAS RESPONDED TO YOUR OBJECTIONS.
24 I'VE READ THE GOVERNMENT'S RESPONSE.

25 THE GOVERNMENT HAS FILED A SENTENCING MEMORANDUM.

COMPUTER-AIDED TRANSCRIPTION

1 I'VE READ THAT.

2 THE PROBATION OFFICER FILED AN ADDENDUM RESPONDING
3 TO THE OBJECTIONS. I HAVE READ AND CONSIDERED THAT AS WELL.

4 THERE WAS A MOTION TO STRIKE YOUR OBJECTIONS. YOUR
5 SENTENCING MEMO WAS LATE. AS I MENTIONED TO YOU, I DENIED
6 THAT. ACTUALLY, IT WAS AS TO THE NEW TRIAL MOTION AS WELL AS
7 THE OBJECTIONS. BUT I DENIED ALL OF THAT. I HAVE CONSIDERED
8 EVERYTHING ON THE MERITS.

9 YOU FILED AN AFFIDAVIT AND REPLIED TO THE
10 GOVERNMENT'S MOTION TO STRIKE.

11 THERE'S A SENTENCING SUMMARY CHART THAT THE
12 GOVERNMENT FILED IN THIS CASE, WHICH I'VE LOOKED AT AND
13 CONSIDERED.

14 YOU FILED NUMEROUS ATTACHMENTS TO YOUR SENTENCING
15 MEMORANDUM, INCLUDING MANY, MANY LETTERS. I'VE READ EACH AND
16 EVERY ONE OF THE LETTERS FROM MR. WILKES'S FAMILY MEMBERS,
17 FROM PEOPLE THAT WERE PART OF THE TRIBUTE TO HEROES, TALKING
18 ABOUT THAT. I THINK THREE SEPARATE PACKAGES OF LETTERS, THE
19 FIRST PACKAGE AND THEN A SUPPLEMENT PACKAGE, AND THEN I GOT A
20 THIRD PACKAGE. I'VE GONE THROUGH ALL OF THOSE LETTERS.

21 I THINK THAT'S IT.

22 HAVE I MISSED ANYTHING?

23 MR. GERAGOS: I THINK YOU COVERED ALL OF THOSE.
24 OBVIOUSLY, THE COURT HAS TO -- I THINK WE HAVE ASKED FOR MORE
25 TIME AND AN EVIDENTIARY HEARING FOR THE CRAWFORD CALCULATIONS

1 PORTION OF THIS BECAUSE OBVIOUSLY THAT'S A SIGNIFICANT,
2 SIGNIFICANT ISSUE.

3 I DON'T KNOW HOW THE COURT PROPOSES TO DEAL WITH THE
4 BEYOND A REASONABLE DOUBT STANDARD.

5 THE COURT: WELL, I CAN TELL YOU I FIND THAT THAT
6 STANDARD DOES NOT APPLY.

7 YOU'RE TALKING ABOUT WHAT FINDINGS I HAVE TO MAKE
8 IF, INDEED, I CAN MAKE FINDINGS.

9 MR. GERAGOS: IF YOU CAN.

10 THE COURT: BY WHAT STANDARD OF PROOF I MUST MAKE
11 THE FINDINGS. THE GOVERNMENT HAS ESSENTIALLY TAKEN THE MIDDLE
12 GROUND OF SAYING THE GUIDELINES SPEAK IN TERMS OF
13 PREPONDERANCE OF EVIDENCE, MORE LIKELY THAN NOT. I, FRANKLY,
14 THINK THAT THAT'S THE STANDARD. BUT OUT OF AN ABUNDANCE OF
15 CAUTION, THEY SAID, "GO AHEAD AND APPLY CLEAR AND CONVINCING
16 EVIDENCE." I'M PREPARED TO DO THAT. I FIND THAT THE PROOF
17 BEYOND A REASONABLE DOUBT STANDARD DOES NOT APPLY TO MAKING
18 THE FINDINGS HERE.

19 AND LET ME SPEAK -- I SUPPOSE BEFORE I PUT THE CART
20 BEFORE THE HORSE, LET ME SPEAK TO THE -- FIRST, LET ME GET
21 CLEAR THAT I'VE READ AND CONSIDERED EVERYTHING.

22 IN YOUR JUDGMENT, THE RECITAL OF MATERIALS THAT I'VE
23 JUST GONE THROUGH, DOES THAT COVER EVERYTHING YOU FILED AND
24 YOU WANTED ME TO READ AND CONSIDER?

25 MR. GERAGOS: I BELIEVE IT DOES. ON THIS ISSUE,

1 YES.

2 THE COURT: MR. BHANDARI, FROM THE GOVERNMENT'S
3 STANDPOINT, HAVE I READ ALL THE SUBMISSIONS THAT YOU'VE MADE?

4 MR. BHANDARI: YES.

5 THE COURT: LET ME DEAL, AS A PRELIMINARY MATTER,
6 THEN, MR. GERAGOS, SOME OF THE LEGALITIES ABOUT WHAT I'M
7 PERMITTED TO CONSIDER.

8 YOU'VE MADE AN OVERALL OBJECTION THAT BECAUSE THE
9 JURY DIDN'T MAKE SPECIFIC FINDINGS ON SOME OF THESE GUIDELINE
10 ADJUSTMENTS, THAT I'M NOT PERMITTED TO DO SO EITHER. THAT
11 NECESSARILY UNDER THE 6TH AMENDMENT AND THE DEFENDANT'S RIGHT
12 TO A JURY TRIAL ON ISSUES THAT AFFECT HIS SENTENCE, THOSE
13 FINDINGS HAVE TO BE A PRODUCT OF A JURY FINDING RATHER THAN A
14 COURT FINDING.

15 ANYTHING ELSE YOU WANT TO SAY ABOUT THAT?

16 MR. GERAGOS: NO. I THINK THAT THAT'S -- I THINK
17 THAT THAT'S CLEARLY THE LAW AND CLEARLY THE TREND BOTH OUT OF
18 THE U.S. SUPREME COURT AND THE 9TH CIRCUIT.

19 THE COURT: I DENY THAT MOTION. I THINK THAT THE
20 WHOLE PROBLEM THAT YOU RAISE HAS BEEN SETTLED BY THE BOOKER
21 CASE. MUCH OF THE ARGUMENT THAT YOU MAKE RELIES ON AND
22 DOESN'T DISTINGUISH BETWEEN DESCENDING OPINIONS AND MAJORITY
23 OPINIONS.

24 THE MAJORITY OPINION IN BOOKER SETTLED THAT. THERE
25 WAS A REMEDIAL PORTION OF THE OPINION THAT WAS AGREED TO BY A

1 MAJORITY OF JUSTICES THAT SAID THE WAY TO FIX THIS IS NOT TO
2 SCRAP THE GUIDELINES ALTOGETHER. IT'S TO MAKE THEM ADVISORY.
3 AND THAT WAS THE FIX. I FIND THAT CUNNINGHAM VERSUS
4 CALIFORNIA HAS NO RELEVANCE TO A POST-BOOKER SENTENCING
5 BECAUSE BOOKER ITSELF PROVIDED THE FIX FOR MANDATORY
6 GUIDELINES BY SAYING THEY'RE NOT MANDATORY. THEY'RE ADVISORY.

7 THE 9TH CIRCUIT HAS SPOKEN TO THIS IN UNPUBLISHED
8 OPINIONS. THE GOVERNMENT HAS CITED 7TH CIRCUIT OPINIONS THAT
9 I FIND PERSUASIVE I THINK THAT ACCURATELY STATE THE LAW WITH
10 RESPECT TO THIS ISSUE.

11 IN U.S. VERSUS HAWKINS AT 480 FED. 3D. 476, JUDGE
12 POSNER OBJECTS, KIND OF IN AN ANIMATED WAY, TO THE VERY
13 ARGUMENTS THAT YOU MAKE. HE SAYS, "BECAUSE THE HAWKINS TRIAL
14 LAWYERS EITHER DON'T READ JUDICIAL OPINION OR THEY DON'T
15 UNDERSTAND THEM OR THEY CAN'T DISTINGUISH A MAJORITY FROM A
16 DESCENDING OPINION OR THEY'RE IN DENIAL OR THEY'RE BOOKER
17 PROTESTORS, THEY INSIST THAT A JUDGE CAN'T BE ALLOWED TO BASE
18 A SENTENCE ON ANY FACTS OTHER THAN THOSE DETERMINED BY A JURY.
19 AS A RESULT, THEY FAILED TO RAISE THE OBJECTION," SO ON AND SO
20 FORTH. "THIS DEMONSTRATES THAT THE LAWYERS' OBSESSIONS CAN
21 HARM CLIENTS." NOW, I DON'T THINK YOU HAVE ANY OBSESSION, BUT
22 THIS MAKES THE POINT. HE SAYS IT WAS SETTLED BY BOOKER.

23 IN A RELATED OPINION BY JUDGE EASTERBROOK -- AGAIN,
24 OUT-OF-CIRCUIT AUTHORITY, BUT THE 9TH CIRCUIT HASN'T SPOKEN
25 DISPOSITIVELY ON THIS. THEY'VE INTIMATED IN THE UNPUBLISHED

1 CASE THAT THE GOVERNMENT CITED.

2 IN U.S. VERSUS ROTI, R-O-T-I, AT 484 FED. 3D,
3 JUDGE EASTERBROOK, CHIEF JUDGE FOR THE 7TH CIRCUIT, SAYS, IN
4 RESPONSE TO THE SAME ARGUMENTS THAT YOU RAISE HERE, "BOOKER
5 ITSELF HELD THAT THE GUIDELINES AS ENACTED VIOLATE THE 6TH
6 AMENDMENT. THE REMEDIAL PORTION OF BOOKER SOLVED THAT
7 CONSTITUTIONAL PROBLEM BY MAKING THE GUIDELINES ADVISORY.
8 GIVEN THAT ADJUSTMENT, FINDINGS OF FACT UNDER THE GUIDELINES
9 NO LONGER DETERMINE THE STATUTORY MAXIMUM SENTENCE.
10 CUNNINGHAM VERSUS CALIFORNIA, THEREFORE, HAS NO EFFECT ON
11 POST-BOOKER FEDERAL PRACTICE. DISTRICT JUDGES REMAIN FREE
12 THAT THE REMEDIAL PORTION OF BOOKER INSTRUCTS TO MAKE FINDINGS
13 OF FACT THAT INFLUENCE SENTENCES PROVIDED THAT THE SENTENCE IS
14 CONSTRAINED BY THE MAXIMUM SET BY STATUTE FOR EACH CRIME."

15 THAT'S PRECISELY THE SITUATION THAT WE HAVE HERE.
16 THERE'S NO ADVOCACY TO IMPOSE A SENTENCE OUTSIDE THE STATUTORY
17 MAXIMUM. AND REALLY WE HAVE MORE THAN THAT HERE BECAUSE AS IT
18 REGARDS SOME OF THE OBJECTIONS YOU RAISE, FOR EXAMPLE,
19 CUNNINGHAM'S STATUS AS AN ELECTED OFFICIAL, THAT WAS IMPLICIT.
20 IT WAS EVEN EXPLICIT IN THE CHARGE ITSELF, IN THE BRIBERY
21 CHARGE. HE WAS IDENTIFIED AS AN ELECTED OFFICIAL.

22 THE AMOUNTS, FOR EXAMPLE. THE AMOUNTS THAT THE
23 GOVERNMENT CONTENDED WERE BRIBES WERE EXPLICITLY SET FORTH IN
24 THE COUNTS THAT THE JURY FOUND GUILTY ON. SO THERE'S NO
25 QUESTION THAT ONE OBSERVING THIS TRIAL OR KNOWING WHAT THE

1 JURY CONSIDERED, THAT THAT'S WHAT THE GOVERNMENT WAS SAYING.
2 MR. WILKES MADE A \$525,000 BRIBE. MR. WILKES MADE A \$100,000
3 BRIBE. THEY DIDN'T MAKE EXPLICIT FINDINGS. WE DIDN'T HAVE A
4 SPECIAL VERDICT FORM, TO BE SURE.

5 AS I SAID, ALL OF THAT IS SOLVED BY THE REMEDIAL
6 PORTION OF BOOKER THAT SAYS THESE ARE GUIDEPOSTS ANYWAY.
7 THEY'RE NOT MANDATORY. THEY DON'T CONSTRAIN WHAT I DO. THEY
8 SIMPLY INFORM IT. SO AGAIN, WITH RESPECT TO YOUR LEGAL
9 ARGUMENTS, I OVERRULE THE OBJECTIONS ON THAT BASIS.

10 NOW, LET ME GO THROUGH THE INDIVIDUAL OBJECTIONS
11 THAT YOU'VE RAISED BEGINNING WITH THE FACTUAL OBJECTIONS.

12 THE FIRST OBJECTION HAS TO DO WITH MR. WILKES'S
13 LAUNCHING ADCS. YOU SAY IT'S INACCURATE AND INCOMPLETE. I
14 SUSTAIN THE OBJECTION. I WILL CONSIDER THE ADDITIONAL CONTEXT
15 THAT YOU GIVE THERE AS PART OF THAT PARAGRAPH. I KNEW THAT TO
16 BE SO FROM HAVING HEARD THE EVIDENCE IN THIS CASE, BUT YOU'RE
17 RIGHT THAT IT'S NOT A COMPLETE RECITAL OF HIS RELATIONSHIP TO
18 ADCS. SO IT'S SUSTAINED.

19 YOUR SECOND OBJECTION TO PAGE 2, LINE 7, THE
20 PROBATION OFFICER SAYS, "ALMOST FROM THE INCEPTION, MR. WILKES
21 WAS TREATING CONGRESSMAN CUNNINGHAM TO LAVISH MEALS AT
22 HIGH-END RESTAURANTS COSTING HUNDREDS, IF NOT THOUSANDS OF
23 DOLLARS." I SUSTAIN THAT OBJECTION. AGAIN, IT'S LARGELY
24 DEPENDENT UPON THE CONTEXT. IT WAS EVIDENT THAT THERE WERE
25 THOUSAND DOLLAR MEALS, BUT THEY CAME LATER. SO THE ARGUMENT

1 THAT IT WAS AT THE INCEPTION IS TECHNICALLY NOT ACCURATE. BUT
2 I SUSTAIN THE OBJECTION. I WILL CONSIDER THE CONTEXT THAT YOU
3 HAVE PROVIDED THERE.

4 THE OBJECTION TO THE STATEMENT THAT WILKES
5 DISPATCHED A LIMOUSINE TO TAKE CUNNINGHAM FROM CAPITOL HILL OR
6 THE KELLY C TO THE RESTAURANTS IS OVERRULED. THE TESTIMONY
7 ESTABLISHED THAT THAT WAS A FACT. I FIND THAT TO BE RELIABLY
8 REPORTED BY THE PROBATION OFFICER.

9 THE FOURTH OBJECTION, THE PROBATION OFFICER CLAIMS
10 MR. WILKES PURCHASED A JET BOAT FOR CUNNINGHAM'S USE AND
11 ENJOYMENT ALONG A TRAILER TO TRANSPORT IT. I UNDERSTAND
12 MR. WILKES'S POSITION IS THAT HE PURCHASED IT FOR HIMSELF AND
13 OCCASIONALLY ALLOWED CUNNINGHAM TO USE IT. APPLYING A CLEAR
14 AND CONVINCING EVIDENCE STANDARD, I DON'T HAVE CLEAR AND
15 CONVINCING EVIDENCE THAT THAT WAS NOT TRUE; THAT IS, THAT IT
16 WAS PURCHASED FOR HIM AND THEN LENT OUT TO CUNNINGHAM. SO
17 I'LL SUSTAIN THE OBJECTION ON THAT SCORE.

18 THE FIFTH OBJECTION, THAT CUNNINGHAM EMPHASIZED THE
19 ADCS PROGRAM AS ONE OF HIS TOP LEGISLATIVE PRIORITIES, I
20 OVERRULE THAT. I FIND THAT THAT WAS ONE OF THE CONGRESSMAN'S
21 TOP LEGISLATIVE PRIORITIES. AGAIN, WHEN YOU GET INTO
22 QUALITATIVE STATEMENTS SUCH AS "TOP" OR "PRIORITY," THERE'S
23 SOME JUDGMENT. AND I FIND THAT THERE WAS PLENTY OF EVIDENCE
24 TO SUPPORT THE CHARACTERIZATION USED BY THE PROBATION OFFICER
25 IN THAT INSTANCE.

COMPUTER-AIDED TRANSCRIPTION

1 THE SIXTH OBJECTION, THAT CUNNINGHAM PUSHED THE ADCS
2 PROGRAM OUTSIDE CONGRESS AS WELL BY EXERTING PRESSURE ON THE
3 DEPARTMENT OF DEFENSE OFFICIALS, I OVERRULE THAT OBJECTION. I
4 FIND THAT THAT OCCURRED. YOU OBVIOUSLY HAVE READ THE
5 TRANSCRIPT OF MY SENTENCING OF CONGRESSMAN CUNNINGHAM. THAT
6 WAS ONE OF THE THINGS THAT I FOUND SO OFFENSIVE IN HIS
7 BEHAVIOR, AND I CHASTISED HIM FOR IT. I THOUGHT IT WAS BEYOND
8 THE PALE THAT HE WOULD CALL OVER TO A LOW-LEVEL OR MID-LEVEL
9 DEFENSE DEPARTMENT OFFICIAL AND THREATEN HIS JOB. I REALLY
10 DID. THAT RUBBED ME THE WRONG WAY. IT OCCURRED, AND THERE
11 WAS EVIDENCE OF IT HAVING OCCURRED IN THIS TRIAL. SO I FIND
12 THAT THAT RECITAL IS RELIABLE AND ACCURATE, AND I OVERRULE THE
13 OBJECTION.

14 SEVEN, THIS HAS TO DO WITH THE JET BOAT BEING
15 DAMAGED AND MR. WILKES BUYING CUNNINGHAM A NEW ONE AND AN
16 INFLATABLE DOCK. AGAIN, APPLYING A CLEAR AND CONVINCING
17 EVIDENCE STANDARD, I SUSTAIN THE OBJECTION. THERE'S EVIDENCE
18 BOTH WAYS HERE ABOUT WHO WAS REALLY THE BENEFICIARY OF THIS
19 BOAT. IT'S CLEAR TO ME THAT CUNNINGHAM HAD HIS WAY WITH THE
20 BOAT WHENEVER HE WANTED IT. BUT WHETHER OWNERSHIP WAS
21 ACTUALLY WITH MR. WILKES OR MR. CUNNINGHAM, I SUSTAIN THE
22 OBJECTION ON THAT GROUND.

23 EIGHT, WILKES HAD ABSOLUTELY NO IDEA THAT CUNNINGHAM
24 HAD MADE PUBLIC COMMENTS CALLING FOR OR CRITICIZING THE
25 DISMISSAL OF THE ASSISTANT UNDER-SECRETARY OF DEFENSE. THAT

COMPUTER-AIDED TRANSCRIPTION

1 IS MOOT. IT HAS NO EFFECT. IT WILL NOT AFFECT MY SENTENCING
2 JUDGMENT WHETHER HE DID OR DIDN'T DO THAT. SO THAT RESOLVES
3 THAT.

4 NINE, THE PROBATION OFFICER WROTE THAT WILKES
5 CONTINUED TO WINE AND DINE CUNNINGHAM IN AN EXTRAVAGANT
6 MANNER. THIS IS DIFFERENT. IT'S NOT TIED INTO THE EARLY
7 PORTION OF THE ACTIVITY, AND I OVERRULE THE OBJECTION. THERE
8 IS PLENTY OF EVIDENCE THAT THERE WERE LAVISH MEALS, VERY
9 EXPENSIVE MEALS THAT WERE PART OF THE RELATIONSHIP BETWEEN
10 MR. WILKES AND MR. CUNNINGHAM. I THINK THAT'S A RELIABLE
11 STATEMENT. IT WILL REMAIN.

12 THE TENTH OBJECTION, MR. WILKES WROTE TWO CHECKS IN
13 THE AMOUNT OF \$100,000 OSTENSIBLY FOR THE PURPOSE OF BUYING
14 CUNNINGHAM'S BOAT. I OVERRULE THAT OBJECTION. I FIND BY
15 CLEAR AND CONVINCING EVIDENCE THAT THAT OCCURRED. THE JURY,
16 AS I SAID, FOUND ON THAT MATTER. AND THEY DETERMINED THAT THE
17 \$100,000 AND THEN THE MORTGAGE PAYMENTS THAT FOLLOWED ON THE
18 BOAT WERE A FORM OF A BRIBE. THAT WAS WHAT WAS ALLEGED, AND
19 THAT'S WHAT THE JURY FOUND. SO THAT'S A RELIABLE RECITAL OF
20 WHAT THE EVIDENCE IS IN THIS CASE.

21 11, MR. WILKES PROVIDED CUNNINGHAM WITH ANOTHER
22 COMPUTER THAT SPECIALIZED IN NAVIGATIONAL SOFTWARE FOR THE
23 KELLY C. I OVERRULE THE OBJECTION. I HAVE NO PROBLEM WITH
24 THE WORD "PROVIDED." I DON'T THINK IT'S VAGUE. HE DID BUY
25 IT. HE DID PAY FOR IT. HE DID GIVE IT TO HIM. THAT'S

COMPUTER-AIDED TRANSCRIPTION

1 ANOTHER WAY OF SAYING HE PROVIDED IT. THE OBJECTION IS
2 OVERRULED.

3 12, THE PROBATION OFFICER NOTED THAT THE DAY AFTER
4 THE 100,000 KELLY C PAYMENT, CUNNINGHAM'S LEGISLATIVE DIRECTOR
5 WORKED TO ADVANCE A REQUEST FOR A \$20 MILLION EARMARK FOR
6 GIDC. THAT'S ACCURATE. THAT'S WHAT HAPPENED. I THINK WHAT
7 YOU OBJECT TO IS THAT THERE WAS ANY RELATIONSHIP BETWEEN --

8 MR. GERAGOS: THAT THERE'S SOME KIND OF A TIE-IN.

9 THE COURT: AGAIN, THAT'S A MATTER FOR JUDGMENT, AND
10 THE COURT WILL EXERCISE ITS JUDGMENT ON THAT. IT'S NOT AN
11 INACCURATE STATEMENT TO SAY IT WAS MORE THAN COINCIDENTAL. I
12 OVERRULE IT. THE IMPLICATION IS A FAIR ONE GIVEN THE
13 EVIDENCE.

14 13, THE PROBATION OFFICER STATED THAT GIDC WAS YET
15 ANOTHER DOCUMENT CONVERSION PROGRAM THAT COULD BE DIRECTED
16 SOLELY TOWARD ADCS TO AVOID SKIRMISHES. I FIND THAT'S
17 ACCURATE. A LOT OF THE TESTIMONY ON THE DOCUMENT COPYING WAS
18 COMPLICATED, AND I DIDN'T PRESUME TO UNDERSTAND ALL OF THE
19 TECHNICALITIES. BUT THAT WAS -- I'VE LOOKED BACK AT THE
20 TRANSCRIPT. THAT WAS TESTIFIED TO. I THINK IT'S RELIABLE.
21 THE PROBATION OFFICER WAS CORRECT TO REPORT IT. SO
22 OBJECTION 13 IS OVERRULED.

23 14, MR. WILKES, YOU ACKNOWLEDGE, DID TREAT
24 CUNNINGHAM TO SOME MEALS. HOWEVER, THEY WERE HARDLY
25 EXPENSIVE. I'VE RULED ON THAT. THAT'S OVERRULED. THERE WERE

1 \$4,000 MEALS AND \$1300 BOTTLES OF WINE AT TIMES. THAT'S
2 EXPENSIVE IN MY BOOK.

3 15 --

4 MR. GERAGOS: COULD I -- THERE'S JUST ONE INDICATION
5 I WANTED TO AMPLIFY. THE COURT DID FIND AND INDICATED THAT IT
6 HAD PROBLEMS WITH THIS IDEA OF IDAHO DURING THE TRIAL. I WAS
7 TRYING TO -- OBJECTION 14, I THINK, FOLLOWS ALONG THE LINES OF
8 WHAT THE COURT HAD PROBLEMS WITH. THERE CLEARLY WERE OR AT
9 LEAST THERE WAS A PRETTY STRONG SUGGESTION THAT THOSE WERE
10 LEGITIMATE CONGRESSIONAL FUND-RAISERS. I THINK THERE WAS
11 EVIDENCE OF LARRY CRAIG. I THINK THAT'S MORE PROBLEMATIC.

12 THE COURT: THIS IS REALLY DIRECTED TO WHETHER I'M
13 MISLED OR ANYBODY ELSE READING THE RECORD IS MISLED. I'M NOT.
14 I ACKNOWLEDGE YOUR POINT. THERE WAS EVIDENCE. AND I'M STILL
15 NOT SURE ABOUT WHETHER WITH COEUR D'ALENE THERE WAS SOME
16 APPROPRIATE PURPOSE INVOLVED. I UNDERSTAND THE COMPETING
17 POINTS OF VIEW ON THAT.

18 BUT THERE'S NOT A BASIS FOR ME TO SUSTAIN THE
19 OBJECTION AND ORDER THAT STRICKEN FROM THE PROBATION REPORT.
20 IT'S A FAIR INFERENCE THAT THE GOVERNMENT DRAWS THAT IT WAS
21 MORE OF THE SAME, MORE TREATING MR. CUNNINGHAM THE REWARD SO
22 THAT MR. WILKES'S LEGISLATIVE GOALS WOULD BE ADVANCED BY THE
23 CONGRESSMAN. SO IN THAT CONTEXT, I OVERRULE THE OBJECTION.

24 15, THE PROBATION OFFICER TAKES THE POSITION THAT
25 CONGRESSMAN CUNNINGHAM CONTINUED TO USE HIS OFFICE TO ENRICH

1 WILKES. THAT'S WHAT THE CASE WAS ALL ABOUT. I FIND THAT
2 THAT'S A RELIABLE PREAMBLE TO THE OTHER COMMENTS MADE IN THAT
3 SECTION. I OVERRULE THE OBJECTION.

4 16, WILKES REAPED SIGNIFICANT PROFITS FROM THE GIDC
5 PROGRAM. I'M NOT CONVINCED BY CLEAR AND CONVINCING EVIDENCE
6 THAT THAT'S THE CASE. I SUSTAIN THE OBJECTION TO THAT
7 STATEMENT.

8 17, MR. WILKES NEVER GAVE CUNNINGHAM SUPER BOWL
9 TICKETS. IT SEEMED TO ME -- AND I'M NOT CLEAR ON THIS POINT.
10 MAYBE THE GOVERNMENT WILL SPEAK TO THIS. I KNOW THAT
11 MR. CUNNINGHAM WAS PART OF THE PRE-GAME SHOW AND THE TRIBUTE
12 TO THE VETERANS. I DON'T KNOW WHETHER HE HAD A PASS INTO THE
13 SUPER BOWL INDEPENDENT.

14 DID THE EVIDENCE SHOW THAT MR. WILKES ACTUALLY
15 PROVIDED HIS TICKET IN? IT'S A SMALL POINT. I GUESS I SHOULD
16 SAY IT'S NOT GOING TO AFFECT MY THINKING AT ALL. WAS THAT THE
17 EVIDENCE?

18 MR. BHANDARI: THE TRIAL EVIDENCE DIDN'T COVER THIS
19 DETAIL. BUT HE WAS AT THE SUPER BOWL INDEPENDENTLY, BUT HE
20 WAS NOT IN THE BOX INDEPENDENTLY. THE BOX PRIVILEGE WAS
21 SEPARATE. THAT WAS THE BENEFIT.

22 THE COURT: I SUSTAIN THE OBJECTION. MOREOVER, THAT
23 DOESN'T AFFECT MY THINKING THAT CONGRESSMAN CUNNINGHAM MADE
24 HIS WAY UP TO MR. WILKES'S BOX DURING THE SUPER BOWL WHEN
25 CUNNINGHAM WAS THERE INDEPENDENTLY TO PARTICIPATE IN THE

COMPUTER-AIDED TRANSCRIPTION

1 PRE-GAME ACTIVITIES.

2 18, THE PROBATION OFFICER CLAIMS THAT ADCS HAD A
3 FINANCIAL WINDFALL IN FISCAL YEAR 2004. AGAIN, THIS IS ONE OF
4 THOSE QUALITATIVE JUDGMENTS AND MATTERS OF OPINION. IT'S A
5 FAIR INFERENCE. I OVERRULE THE OBJECTION.

6 19, THE PROBATION OFFICER USES THE WORD "BRIBE" TO
7 DESCRIBE THE 525,000. THAT WAS SETTLED BY THE JURY IN THIS
8 CASE. I OVERRULE THE OBJECTION. I FIND IT'S SUPPORTED BY THE
9 EVIDENCE.

10 20, AGAIN, MR. WILKES DENIES BRIBING MR. CUNNINGHAM.
11 THERE'S A REFERENCE TO BRIBING. THAT'S OVERRULED FOR THE SAME
12 REASONS AS THE LAST OBJECTION.

13 21, MR. WILKES WAS NOT AWARE OF ANY MONEY-LAUNDERING
14 TAKING PLACE BETWEEN WADE, MICHAEL, KONTOGIANNIS, AND
15 CUNNINGHAM. I OVERRULE THE OBJECTION. I FIND THAT THERE WAS
16 MONEY-LAUNDERING TAKING PLACE. MR. WILKES'S POSITION WAS HE
17 WASN'T AWARE OF IT. HIS POSITION FURTHER WAS THAT HE WAS
18 MAKING AN INVESTMENT. THE JURY REJECTED HIS DEFENSE AND HIS
19 TESTIMONY ON THAT SCORE IN FINDING GUILT ON THE PERTINENT
20 COUNTS. SO I FIND IT'S RELIABLY REPORTED THAT WAY.

21 22, NONE OF THE MONEY AND PROPERTIES LISTED ON
22 PAGE 7 OF THE PSR WAS A BRIBE. AGAIN, I HAVE SOME PROBLEM,
23 MR. GERAGOS, WITH SOME OF THESE THINGS. I'VE ALREADY MADE
24 FINDINGS THAT I COULD NOT FIND BY CLEAR AND CONVINCING
25 EVIDENCE THAT THESE WERE BRIBES. LET ME TELL YOU WHAT I HAVE

1 NO PROBLEM WITH AMONG THE THINGS LISTED THERE.

2 I THINK THE EVIDENCE ESTABLISHED AND THE JURY FOUND
3 THAT THE 525,000 WAS A BRIBE.

4 THEY FOUND THAT THE 100,000 FOR THE KELLY C, THAT IT
5 WAS OSTENSIBLY A DOWN PAYMENT, BUT NEVER RETRIEVED BY
6 MR. WILKES. THEY FOUND THAT THAT WAS A BRIBE. THAT WAS THE
7 FINDING.

8 THE MORTGAGE PAYMENT ON THE KELLY C FROM ROUGHLY
9 NOVEMBER OF 2000 TO APRIL 2001, THEY FOUND THAT THOSE PAYMENTS
10 THAT AMOUNTED TO OVER \$11,000 WERE A BRIBE.

11 ALL THOSE FINDINGS WERE SUPPORTED BY THE JURY
12 VERDICTS IN THIS CASE. SO I OVERRULE THE OBJECTIONS WITH
13 RESPECT TO THOSE THREE THINGS.

14 WITH RESPECT TO THE OTHERS, I SUSTAIN THE
15 OBJECTIONS.

16 NOW, THE ONLY OTHER QUESTION REGARDING LEGAL
17 OBJECTIONS I THINK IS THE VALUATION. I'LL LET YOU SPEAK TO
18 THIS. LET ME TELL YOU FIRST WHAT MY FINDINGS ARE. THEY'RE
19 NOT NECESSARILY INCONSISTENT WITH THE POSITION YOU TAKE.

20 THE GUIDELINES PROVIDE THAT THERE'S THREE WAYS TO
21 DETERMINE THE VALUE OF THE LOSS. THAT'S SIGNIFICANT IN THIS
22 CASE BECAUSE THERE'S A CROSS-REFERENCE. IF SOMEBODY'S
23 CONVICTED OF BRIBERY, THE GUIDELINES SAY, "WELL, HOW MUCH WERE
24 THE BRIBES OR HOW MUCH WAS THE LOSS OR HOW MUCH DID THE PERSON
25 GAIN?" AND THEN TAKE THE GREATEST OF THOSE NUMBERS AND APPLY

1 THE LOSS TABLE THAT'S IN THE FRAUD SECTION OF THE GUIDELINES
2 AND COME UP WITH A GUIDELINE SENTENCE THAT WAY.

3 THE GOVERNMENT HAS TAKEN THE POSITION THAT I SHOULD
4 LOOK TO THE BENEFIT RECEIVED BY MR. WILKES OR THE LOSS TO THE
5 GOVERNMENT. I REJECT THOSE LATTER TWO METHODS AS TOO
6 IMPRECISE. I TAKE THE GOVERNMENT'S POINT THAT SOME OF THE
7 CASES HAVE SAID THAT I DON'T HAVE TO MAKE THE CALCULATIONS
8 WITH PRECISION. BUT I FIND THAT TO RELY ON EITHER OF THOSE
9 METHODS WOULD BE WAY TOO IMPRECISE IN THIS CASE. I DON'T HAVE
10 ANY COMFORT IN SETTING A NUMBER BASED ON HOW MUCH MR. WILKES
11 PROFITED OR HOW MUCH THE GOVERNMENT LOST.

12 I'VE READ THE DECLARATION OF THE AGENT. HE SETS THE
13 LOSS AT \$49 MILLION. I DON'T PRESUME TO TELL HIM HIS
14 BUSINESS. BUT THE STANDARD THAT YOU'VE AGREED THAT I SHOULD
15 APPLY IS CLEAR AND CONVINCING EVIDENCE. I'M NOT CONVINCED
16 CLEARLY AND CONVINCINGLY THAT THAT'S THE AMOUNT OF LOSS IN
17 THIS CASE, NOR CAN I DISCERN, FOR THE SAME REASONS, HOW MUCH
18 MR. WILKES GOT IN ILL-GOTTEN GAINS.

19 I'LL GIVE YOU ONE EXAMPLE. I KNOW THIS WAS
20 HARD-FOUGHT. I KNOW THE GOVERNMENT TOOK THIS POSITION FROM
21 THE BEGINNING, THAT THESE THINGS WERE WORTHLESS, THAT THESE
22 CONTRACTS WERE WORTHLESS, THAT THE GOVERNMENT GOT NOTHING OUT
23 OF THEM. YOU TOOK THAT POSITION WITH RESPECT TO THE SCANNING
24 CONTRACT IN THE PANAMA CANAL ZONE. I HAPPEN TO AGREE WITH THE
25 ARGUMENT MR. GERAGOS MADE. I THINK THERE WAS SOME VALUE TO

1 THAT.

2 LOOK, WE'VE GOT A MADMAN DOWN IN VENEZUELA THAT
3 DOESN'T LIKE US. IF THE SAME THING HAPPENS IN PANAMA AT SOME
4 POINT AND THEY SHUT DOWN THAT CANAL, WE, AS A COUNTRY, ARE
5 GOING TO HAVE TO DO SOMETHING ABOUT THAT. TO SAY THAT HAVING
6 THE CANAL ZONE MAPPED OUT, KNOWING WHERE THE LOCKS ARE,
7 KNOWING WHERE EVERYTHING IS WOULDN'T BE OF SOME ASSISTANCE TO
8 THE UNITED STATES AT THAT POINT I THINK IS NAIIVE. I THINK
9 THAT'S THE FIRST THING THAT MILITARY COMMANDERS WOULD WANT TO
10 KNOW. WHAT'S THE LAY OF THE LAND DOWN THERE IF WE HAVE TO
11 INVADE?

12 NOW, THIS IS ALL HYPOTHETICAL. BUT WHEN YOU SAY
13 THERE'S NO VALUE TO WHAT MR. WILKES PROVIDED, HE PROVIDED
14 SCANS OF THAT AREA THAT PRESUMABLY ARE DIGITIZED AND REMAIN
15 THE PROPERTY OF THE UNITED STATES TODAY AND CAN BE ACCESSED AT
16 SOME POINT IF THERE'S A NEED FOR IT.

17 THAT'S THE DIFFICULTY I HAVE, MR. BHANDARI AND
18 MR. HALPERN AND MS. CHU, WITH MAKING A FINDING THAT THE VALUE
19 THE CONTRACT WAS THUS AND SO. I DON'T KNOW WHAT THAT'S WORTH.
20 OBVIOUSLY, IF THERE'S SOME NEED TO INVADE PANAMA AT SOME
21 POINT -- I GET IT THAT THIS IS ALL HYPOTHETICAL -- BUT IT'S
22 PROBABLY WORTH A LOT THEN. WE WOULD PROBABLY PAY MILLIONS OF
23 DOLLARS TO HAVE THAT KIND OF INFORMATION. WE HAVE IT OWING TO
24 THE EFFORTS THAT HE DID. DID WE PAY TOO MUCH FOR IT AT THE
25 TIME AND GIVEN THAT THE CONCERN IS ALL HYPOTHETICAL? MAYBE.

COMPUTER-AIDED TRANSCRIPTION

1 MAYBE.

2 I MEAN, THE POINT THAT YOU RAISE REALLY IMPLICATES,
3 I THINK, THE WHOLE BUSINESS OF GOVERNMENT CONTRACTING. I
4 LEARNED IN THIS TRIAL THAT WE HAVE THESE FIRM FIXED CONTRACTS
5 WHERE WE SAY, "REGARDLESS OF WHAT IT COST YOU, WE'LL PAY THIS
6 AMOUNT. EVEN IF YOU GET IT FOR A TENTH OF THAT AMOUNT, WE'LL
7 STILL PAY YOU THIS AMOUNT."

8 NOW, MOST BUSINESSES WOULDN'T CONDUCT THEMSELVES
9 THAT WAY. THEY'D GO OUT OF BUSINESS IF THEY DID THAT, IF THEY
10 PAID OUTRAGEOUS AMOUNTS. ALL OF US ARE FAMILIAR WITH THE
11 \$14,000 TOILET SEAT. I DON'T THINK THE GOVERNMENT
12 CONSISTENTLY DOES A GOOD JOB OF BARGAINING FOR THE BEST PRICE
13 FOR THE THINGS THAT THEY HAVE. THAT'S NOT TO SAY THAT THESE
14 THINGS HAVE NO VALUE. THE PROBLEM I HAVE IN RELYING ON THE
15 OTHER TWO METHODS THAT YOU ADVOCATE IS IT ASKS ME TO ASSESS
16 VALUE WHEN IT WAS NEVER DEFINITIVELY ESTABLISHED. I KNOW THE
17 AGENT SAYS THERE WAS NO VALUE TO ANY OF THE SERVICES PROVIDED.
18 I THINK THAT IS GOING A LITTLE TOO FAR.

19 I REMEMBER THE PICTURE, MR. HALPERN, OF THE
20 COMPUTERS LINED UP AND STACKED UP AGAINST THE WALL UNOPENED.
21 THERE IS SOME VALUE THERE. I DON'T KNOW WHAT IT IS. THERE
22 WERE PROBABLY TOO MANY COMPUTERS, AND THE TECHNOLOGY CHANGES
23 EVERY SIX MONTHS. I GET THAT.

24 BUT AT THE END OF THE DAY, THIS WAS AN AUTHORIZED
25 EXPENDITURE. I THINK THE GOVERNMENT PROBABLY FREQUENTLY PAYS

1 TOO MUCH FOR THINGS. AND I'M NOT GOING TO, IN THIS CASE AT
2 LEAST, ENTER INTO THE FRAY AND TRY TO DETERMINE WHAT WAS FAIR
3 VALUE FOR THE COST OF SERVICES, PARTICULARLY WHEN THERE IS A
4 MUCH MORE PRECISE METHOD THAT LEADS TO A DEFINITIVE CONCLUSION
5 ABOUT WHAT THE LOSS IS. THAT'S THE FIRST METHOD, WHICH WAS
6 THE VALUE OF THE BRIBE.

7 I'VE ALREADY FOUND AND THE JURY FOUND THAT THERE WAS
8 A \$525,000 BRIBE, THERE WAS A \$100,000 BRIBE, AND THERE WAS AN
9 \$11,000 BRIBE IN THE FORM OF MORTGAGE PAYMENTS. THAT ADDS UP
10 TO \$650,000, ROUGHLY. THE GUIDELINES SAY IF THE LOSS IS MORE
11 THAN 400- AND LESS THAN A MILLION, THEN 14 IS THE NUMBER TO BE
12 ADDED. I FIND THAT THAT IS THE APPROPRIATE NUMBER TO ADD IN
13 THIS CASE. THAT'S READILY DISCERNABLE. I CAN FIND EASILY BY
14 CLEAR AND CONVINCING EVIDENCE THAT THAT WAS THE AMOUNT OF THE
15 LOSS IN THIS CASE.

16 AND FRANKLY, AT THE END OF THE DAY GIVEN THE
17 GOVERNMENT'S RECOMMENDATION FOR SENTENCING, IT DOESN'T AFFECT
18 MUCH. THE GOVERNMENT HAS ADVOCATED LEVEL 22 AND PROBATION 20.
19 BUT NONE OF THAT -- ALL OF THAT WILL FALL ONCE ALL THE
20 GUIDELINE ADJUSTMENTS ARE MADE WELL WITHIN THE RECOMMENDATION
21 THAT YOU MADE.

22 ANYTHING MORE TO SAY ON THAT?

23 MR. GERAGOS: I'LL SUBMIT.

24 THE COURT: THOSE ARE MY FINDINGS. I FIND THAT THE
25 RELIABLE, THE ACCURATE, THE FAIR WAY TO VALUE THE LOSS IN THIS

1 CASE IS TO LOOK AT THE AMOUNT OF THE BRIBES. THE JURY
2 FINDINGS, AS I SAID, SUPPORT A FINDING OF \$636,000 IN BRIBES
3 THAT WERE PAID. THAT TRANSLATES TO A LEVEL 14.

4 SO WITH THAT SAID, I OVERRULE THE OBJECTION TO THE
5 METHODOLOGY. AND I OVERRULE AND DENY THE REQUEST FOR
6 CONTINUANCE. I WOULDN'T BE ASSISTED BY AN INDEPENDENT
7 ACCOUNTANT HIRED BY YOU THAT PRESUMED TO CONTRADICT THE
8 FINDINGS BY THE JURY. THAT'S WHERE WE ARE. SHE COULD COME UP
9 WITH SOME OTHER NUMBER, BUT AT THE END OF THE DAY WE'RE LEFT
10 WITH WHAT WAS IN THE INDICTMENT AND GUILT FOUND BY THE JURY.
11 AND THAT'S WHAT'S DISPOSITIVE HERE. SO I DON'T SEE ANY NEED
12 TO POSTPONE THIS TO HAVE AN INDEPENDENT ACCOUNTANT TRY TO
13 COUNTER THE GOVERNMENT'S DECLARATION ABOUT A \$49 MILLION LOSS.
14 I'M NOT RELYING ON THAT.

15 I THINK THAT ANSWERS THE LEGAL OBJECTIONS,
16 MR. GERAGOS.

17 HAVE I MISSED ANY?

18 MR. GERAGOS: I THINK THAT'S IT.

19 THE COURT: I KNOW THERE ARE SOME OTHER ONES THAT
20 YOU'VE RAISED, BUT THEY WERE ALL RAISED UNDER THE AUSPICES
21 THAT I HAD NO RIGHT TO MAKE FINDINGS THAT THE JURY DIDN'T
22 MAKE.

23 MR. GERAGOS: THAT'S CORRECT.

24 THE COURT: I'VE OVERRULED THAT OBJECTION. I FOUND
25 THAT THE REMEDIAL PORTION OF THE BOOKER CASE PERMITS ME,

1 WITHIN THE MAXIMUM SET BY STATUTE, TO MAKE FINDINGS THAT
2 INFORM THE DECISION OF WHAT THE SENTENCE WOULD BE. THE
3 FINDINGS, OBVIOUSLY, AREN'T BINDING. THE GUIDELINES AREN'T
4 BINDING.

5 BUT I FIND HERE THAT THE BASE LEVEL IS 12. I DO
6 FIND THAT THERE WAS MORE THAN ONE BRIBE. THAT'S IMPLICIT IN
7 WHAT I'VE SAID SO FAR IN ALLUDING TO THREE DIFFERENT PAYMENTS
8 BY MR. WILKES TO MR. CUNNINGHAM. SO I FIND THAT TWO POINTS
9 ARE ADDED PURSUANT TO 2(C)1.1(B)(1) FOR MORE THAN ONE BRIBE.

10 I FIND THAT MR. CUNNINGHAM WAS AN ELECTED PUBLIC
11 OFFICIAL. FOUR POINTS ARE ADDED FOR THAT. THAT WAS, AGAIN,
12 CLEAR AND IMPLICIT IN THE CHARGES. IT WAS VALIDATED BY THE
13 JURY'S VERDICT ON COUNT 13. AS I SAID, I FIND THAT THE AMOUNT
14 OF THE LOSS CORRESPONDS TO THE FRAUD TABLE AT LEVEL 14 BETWEEN
15 400,000 AND LESS THAN A MILLION.

16 SO AS TO THE BRIBERY COUNT, WHICH IS THE MASTHEAD
17 COUNT THAT THE PROBATION OFFICER AND THE GOVERNMENT'S USED TO
18 CALCULATE THE GUIDELINE SENTENCE, I FIND THAT THE TOTAL IS 32;
19 THAT IS, 12 PLUS TWO FOR MORE THAN ONE BRIBE, PLUS FOUR FOR
20 Bribing an ELECTED OFFICIAL, WHICH GETS US TO 18, PLUS 14 FOR
21 THE AMOUNT OF THE BRIBES, WHICH GETS US TO 32.

22 MR. WILKES WAS ALSO CONVICTED OF MONEY-LAUNDERING.
23 2(S)1.1 REQUIRES THAT THE COURT APPLY SPECIAL OFFENSE
24 CHARACTERISTICS FOR MONEY-LAUNDERING. TWO POINTS ARE ADDED
25 BECAUSE OF THE MONEY-LAUNDERING CONVICTION PURSUANT TO

1 2(S)1.1.

2 AND THEN THERE'S A QUESTION ABOUT WHETHER THIS WAS
3 SOPHISTICATED MONEY-LAUNDERING. I HAVE OVERRULED YOUR
4 OBJECTION ON THE PARKVIEW INFORMATION, BUT THE OBJECTION
5 REALLY WAS WHETHER YOU COULD BE PREPARED AT TIME OF TRIAL. I
6 KNOW YOU UNDERSTAND NOW, HAVING HEARD THE CASE AND LOOKED AT
7 THEIR CHART, WHY THEY SAY IT'S SOPHISTICATED. I AGREE WITH
8 THEM. I SPECIFICALLY ADOPT PAGES 12 AND 13 OF THE
9 GOVERNMENT'S RESPONSE TO YOUR OBJECTIONS WHERE THEY LAY OUT
10 THE MULTIPLE LAYERS OF LAUNDERING THAT OCCURRED TO TRY TO
11 COVER THE SOURCE OF THIS PAYMENT. IT'S EVIDENT THAT EVERYBODY
12 WAS TRYING TO COVER UP THAT MR. WILKES AND MR. WADE WERE
13 PAYING OFF CONGRESSMAN CUNNINGHAM'S MORTGAGE. THAT WAS THE
14 WHOLE OBJECT OF THIS. AND THE FINANCIAL TRANSACTIONS WERE A
15 RUSE TO TRY TO THROW OFF THE UNWARY AS TO WHAT WAS GOING ON.
16 IT WAS A SOPHISTICATED RUSE. I'M CONVINCED MR. KONTOGIANNIS
17 IS A SOPHISTICATED MONEY-LAUNDERER, AND HE APPLIED HIS TRADE
18 HERE.

19 AS I SAID, THE SERIES OF TRANSACTIONS THAT ARE
20 SPELLED OUT AT 12 AND 13 ARE SPECIFICALLY ADOPTED BY ME. THAT
21 ADDS FOUR POINTS. SO WE'RE UP TO A 36.

22 THEN THE GUIDELINES TELL ME TO APPLY THE CHAPTER 3
23 ADJUSTMENTS. YOU'VE OBJECTED TO THE GOVERNMENT'S AND THE
24 PROBATION OFFICER'S RECOMMENDATION THAT I MAKE A FINDING THAT
25 MR. WILKES WAS A LEADER AND ORGANIZER OF A CRIMINAL ACTIVITY

1 INVOLVING FIVE OR MORE PEOPLE. I DECLINE TO MAKE THAT FINDING
2 IN THIS CASE. LET ME TELL YOU WHY.

3 FIRST, I'M NOT PERSUADED BY CLEAR AND CONVINCING
4 EVIDENCE THAT MR. WILKES WAS THE LEADER OR ORGANIZER. I DON'T
5 KNOW. HE WELL COULD HAVE BEEN. THAT'S BESIDE THE POINT. I'M
6 SUPPOSED TO BE CLEARLY CONVINCED THAT HE WAS, AND I'M NOT.
7 YOU'VE POINTED OUT IN YOUR SENTENCING MEMORANDUM THAT THE
8 GOVERNMENT HASN'T ALWAYS BEEN CONSISTENT ON THIS. AND
9 MR. CUNNINGHAM'S SENTENCING MEMORANDUM SUBMITTED BY THE UNITED
10 STATES IN THE CUNNINGHAM CASE, THE GOVERNMENT SAID, AMONG
11 OTHER THINGS, THAT CUNNINGHAM WAS NOT ONLY THE CENTRAL OBJECT
12 OF THE CONSPIRACY. HE ALSO MADE THE CRITICAL DECISIONS. THEY
13 ALSO SAID CUNNINGHAM WAS CALLING THE SHOTS. THEY ALSO SAID
14 CUNNINGHAM DIRECTED ACTIVITIES AND NUMEROUS CRIMINALLY
15 CULPABLE PARTICIPANTS, INCLUDING HIS CO-CONSPIRATORS.

16 SO THAT WAS THEIR VIEW AT THE TIME MR. CUNNINGHAM
17 WAS SENTENCED, THAT HE WAS THE LEADER AND THE ORGANIZER.
18 THERE'S OTHER EVIDENCE THAT AT LEAST MAKES FAIRLY DEBATABLE
19 THE PROPOSITION ABOUT WHO IS THE CHICKEN AND WHO IS THE EGG
20 HERE. I RECALL THE BRIBE LIST THAT WAS FOUND ON THE BOAT.
21 THAT WAS IN MR. CUNNINGHAM'S HANDWRITING. AND AN AMOUNT OF
22 CONTRACT CORRESPONDED TO AN AMOUNT OF BRIBE. THERE'S NO
23 EVIDENCE THAT MR. WILKES HAD A GUN TO MR. CUNNINGHAM'S HEAD
24 SAYING, "EITHER YOUR SIGNATURE, OR YOUR BRAINS WILL BE ON
25 THIS. WRITE IT LIKE THAT." SO I'M LEFT TO TRY TO DISCERN WHO

1 WAS THE ORGANIZER.

2 ONE OF THE VEXING ASPECTS OF THIS TO ME,
3 MR. GERAGOS, IS I DON'T KNOW HOW IT STARTED. I REALLY DON'T.
4 I DON'T KNOW WHETHER IT WAS A NUDGE BY MR. WILKES SAYING "YOU
5 KNOW, THERE'S SOME MONEY IN THIS FOR YOU IF WE CAN GET THIS
6 DONE" OR IF, ON THE OTHER HAND, CUNNINGHAM SAID "WELL, THERE'S
7 A WAY TO GET THIS DONE. IT INVOLVES TAKING CARE OF ME
8 PERSONALLY." I DON'T KNOW. THERE'S NEVER BEEN ENOUGH
9 EVIDENCE FOR ME TO MAKE A FINDING ON WHAT THE GENESIS WAS OF
10 HOW THIS THING GOT STARTED.

11 I SUSPECT IT STARTED WITH THE CULTURE OF LOBBYISTS
12 AND PEOPLE APPLYING FOR FAVORS FROM ELECTED OFFICIALS, AND
13 THEN IT GOT OUT OF HAND. BUT WHETHER CUNNINGHAM DROVE IT TO
14 THAT POINT OR MR. WILKES DROVE IT TO THAT POINT, I CAN'T BE
15 CERTAIN ON WHAT'S HERE. CERTAINLY, I CAN'T BE CONVINCED BY
16 CLEAR AND CONVINCING EVIDENCE.

17 I KNOW ALSO THAT THE LINK TO MR. KONTOGIANNIS, WHO
18 WAS THE FACILITATOR OF THE BRIBE, WAS A LINK REALLY BETWEEN
19 MR. CUNNINGHAM AND MR. KONTOGIANNIS. MR. WILKES NEVER KNEW
20 THIS FELLOW. THAT SUGGESTS THAT CUNNINGHAM WAS THE KINGPIN.
21 HE'S TELLING WILKES "SEND THE MONEY TO THIS GUY YOU DON'T
22 KNOW." SO I'M JUST NOT CONVINCED THAT HE WAS AN ORGANIZER OR
23 A LEADER.

24 THERE'S ALSO A QUESTION I HAVE ABOUT WHETHER FIVE OR
25 MORE PARTICIPANTS WERE INVOLVED IN WHAT HE WAS DOING. YOU

1 LIST MR. WADE AS ONE OF THE PARTICIPANTS. I UNDERSTAND THERE
2 WAS AN ASSOCIATION AT THE BEGINNING. BUT BY THE END, HE AND
3 MR. WADE WERE COMPETITORS. PART OF THE TESTIMONY WAS ABOUT
4 MR. WILKES'S PIQUE OVER NOT GETTING A CONTRACT AND CALLS TO
5 CUNNINGHAM THEN DIRECTED THAT IT BE REVERSED AND SOME OF THE
6 MONEY GO FROM WADE TO WILKES. THESE GUYS WERE COMPETING WITH
7 ONE ANOTHER. THEY WERE HARDLY IN A JOINT ENTERPRISE.

8 IF ANYTHING, IF I HAD TO MAKE A FINDING ON WHO
9 ORGANIZED AND WHO LED THIS, THE CENTRAL FIGURE, AS YOU TOLD ME
10 AT THE TIME MR. CUNNINGHAM WAS SENTENCED, WAS MR. CUNNINGHAM.
11 HE WAS THE GUY THAT WAS PUTTING ALL THE OTHER NEFARIOUS PARTS
12 OF THIS TOGETHER. IN GOOD CONSCIENCE, I CAN'T AND I DO NOT
13 MAKE THE FINDING HERE THAT MR. WILKES WAS A LEADER OR
14 ORGANIZER.

15 NOW, MORE TO COME ON THIS LATER, MR. WILKES. IT
16 DOESN'T ABSOLVE YOU ALTOGETHER. YOU'RE A SHREWD FELLOW. AND
17 WHEN WE GET TO THE 3553(A) FACTORS, IT DIDN'T PASS ME BY THAT
18 YOU SIZED UP MR. CUNNINGHAM AND HIS NEED FOR BEING FLUFFED AND
19 HIS WEAK EGO, AND YOU PLAYED ON THAT. I'M NOT SAYING THAT
20 THAT DIDN'T OCCUR. I THINK IT DID OCCUR IN THIS CASE. AS I
21 SAID, I'LL SPEAK TO THAT LATER.

22 BUT I DON'T FIND, STRICTLY SPEAKING, THAT THIS MEETS
23 THE CRITERIA TO RESULT IN A FOUR-LEVEL INCREASE UNDER THE
24 GUIDELINES. YOU'VE TAKEN THE POSITION HIS INVOLVEMENT WAS
25 OTHERWISE EXTENSIVE. IT WAS EXTENSIVE, BUT IT'S ALL BEEN

COMPUTER-AIDED TRANSCRIPTION

1 COVERED BY OTHER ADJUSTMENTS THAT I'VE ALREADY MADE UNDER THE
2 GUIDELINES AND WILL BE THE SUBJECT AND HAS BEEN THE SUBJECT OF
3 YOUR ARGUMENT THAT THE NATURE AND SERIOUSNESS AND
4 CIRCUMSTANCES OUGHT TO TAKE INTO ACCOUNT HOW LONG THIS THING
5 WENT ON AND THE BREADTH OF IT AND THE EFFECT THAT IT HAD.

6 SO I DECLINE TO FIND THAT HE HAD A ROLE AS LEADER OR
7 ORGANIZER AND TO APPLY FOUR POINTS FOR THAT.

8 THE GOVERNMENT HAS ALSO ASKED FOR A TWO-POINT
9 ADJUSTMENT FOR OBSTRUCTION OF JUSTICE. THEY OUTLINE MANY OF
10 WHAT THEY ALLEGE ARE LIES. IN THIS REGARD, THE JURY AGREED
11 WITH THEM THAT CONTRARY TO MR. WILKES'S TESTIMONY, THE
12 \$525,000 WAS NOT AN INVESTMENT. AND I FIND THAT THAT FINDING
13 IS ACCURATE IN LIGHT OF THE EVIDENCE. NOR WAS THE \$100,000
14 DOWN PAYMENT ON THE KELLY C TRULY A DOWN PAYMENT. IT WAS, IN
15 MY JUDGMENT AND THE JUDGMENT OF THE JURY, A BRIBE. FOR
16 MR. WILKES TO SAY OTHERWISE WAS FALSE.

17 AND THEN THE SAME IS TRUE OF THE \$11,000 MORTGAGE
18 PAYMENT. THAT WASN'T IN ANTICIPATION OF HIM ACQUIRING THE
19 KELLY C. THAT WAS BRIBE MONEY THAT WAS BEING PAID TO
20 CUNNINGHAM OVER ROUGHLY A SIX-MONTH PERIOD OF TIME. BUT IN
21 THIS REGARD, I THINK ONE LIE SUFFICES. AND THE ONE LIE THAT
22 THEY'VE POINTED TO THAT RESONATES WITH ME IN LIGHT OF THE
23 EVIDENCE IS THE DENIAL BY MR. WILKES THAT HE ARRANGED
24 PROSTITUTES IN HAWAII.

25 THAT, MR. WILKES, I'VE GOT TO TELL YOU, WAS JUST THE

COMPUTER-AIDED TRANSCRIPTION

1 REALLY UNBELIEVABLE PART OF YOUR TESTIMONY. IT WAS AGAINST
2 THE WEIGHT OF THE EVIDENCE. THEY BRING IN THESE WOMEN THAT
3 SAY, "HERE ARE THESE TWO GUYS IN THE HOT TUB." FOR SOME
4 REASON, THEY NEVER ASKED THEM TO IDENTIFY YOU, BUT IT WAS
5 CLEAR BY IMPLICATION THAT YOU WERE THE OTHER GUY IN THE HOT
6 TUB. AND THEN THE TWO GUYS IN THE HOT TUB TRUNDLED OFF UP TO
7 THE BEDROOM WITH THESE GALS. I DON'T KNOW WHAT INTEREST THEY
8 HAD IN COMING IN AND SAYING THEY HAD SEX WHEN THEY DIDN'T.

9 YOU HAD YOUR OWN NEPHEW SAYING THAT "MY UNCLE ASKED
10 ME TO DO THIS, TO PROCURE THIS." THAT WAS CREDIBLE TESTIMONY.
11 THE GUY THAT DROVE THE PROSTITUTES OVER. IN THE CONTEXT OF
12 THIS CASE, PROSTITUTION TAKES ON A LITTLE MORE SIGNIFICANCE
13 THAN IT WOULD ORDINARILY HAVE. ORDINARILY, YOU'D HAVE SOME
14 JUNIOR JUDGE IN THE SUPERIOR COURT HANDLING IT. BUT HERE THE
15 PROSTITUTION WAS TO GET YOUR WAY WITH MR. CUNNINGHAM. THE
16 GOVERNMENT ALLEGED IT WAS A BRIBE, AND THE JURY SO FOUND. AND
17 FOR YOU TO DENY THAT, MR. WILKES, UNDER OATH, YOU COMPOUNDED
18 AN ALREADY BAD SITUATION.

19 I WANT TO TELL YOU THIS. I TOLD YOU THIS
20 THROUGHOUT, AND I'LL REITERATE IT NOW.

21 YOU DON'T GET PUNISHED IN THIS COURT FOR GOING TO
22 TRIAL. YOU DON'T. I RESPECT ANYBODY'S RIGHT TO SAY, "PROVE
23 IT. YOU BROUGHT THIS ACCUSATION. PROVE IT." I DIDN'T AT ANY
24 POINT HOLD IT AGAINST YOU THAT YOU INSISTED ON YOUR RIGHT TO A
25 JURY TRIAL. YOU HAVE THAT RIGHT HERE. AND I'M NOT GOING TO

1 CHILL IT BY SAYING, "OKAY. THE JURY FOUND AGAINST YOU.
2 INVARIABLY, THAT MEANS YOU LIED IF YOU TESTIFIED." I DON'T DO
3 THAT IN EVERY CASE. BUT HERE I THINK THAT THE ARGUMENT IS
4 WELL-TAKEN THAT YOU GAVE FALSE TESTIMONY HERE. YOU GET TO GO
5 TO TRIAL HERE WITHOUT CONSEQUENCE. BUT WHAT YOU DON'T GET TO
6 DO, MR. WILKES, IS YOU DON'T GET ON THE STAND AND TAKE AN OATH
7 TO TELL THE TRUTH AND LIE ABOUT IT. THAT'S NOT RISK-FREE.
8 THAT'S NOT RISK-FREE HERE. AND YOU ROLLED THE DICE AND
9 GAMBLED ON THAT, AND YOU LOST.

10 SO I FIND THE OBSTRUCTION OF JUSTICE ADJUSTMENT DOES
11 APPLY IN THIS CASE. I ADD TWO POINTS FOR THAT.

12 IN THE END, MR. GERAGOS, MY GUIDELINE
13 CALCULATIONS -- OBVIOUSLY, I'LL GIVE YOU AN OPPORTUNITY TO
14 SPEAK FULLY TO ALL THIS -- ENDS UP AT A 38. LET ME SUMMARIZE
15 FOR US AGAIN.

16 THE BASE LEVEL IS 12. I FIND THAT THERE WERE
17 MULTIPLE BRIBES. THAT ADDS TWO. I FIND MR. CUNNINGHAM, THE
18 PERSON WHO WAS BRIBED, WAS AN ELECTED OFFICIAL. THAT ADDS
19 FOUR. AS I SAID, I FIND THE VALUE OF THE BRIBES IS A LEVEL 14
20 ADJUSTMENT UPWARD. MONEY-LAUNDERING ADDS TWO. I FOUND THAT
21 THE MONEY-LAUNDERING IN THIS CASE WAS SOPHISTICATED, WHICH
22 ADDS TWO. AND THEN I FOUND THAT MR. WILKES OBSTRUCTED JUSTICE
23 BY NOT TELLING THE TRUTH WHEN HE TESTIFIED. THAT ADDS TWO.

24 THE TOTAL IS 38. HE'S IN CRIMINAL HISTORY
25 CATEGORY 1. I FIND THAT THE GUIDELINE RANGE IS 235 TO

1 293 MONTHS. AS I MENTIONED, MR. HALPERN AND MR. BHANDARI,
2 THAT RANGE IS WITHIN THE RECOMMENDATION I THINK MADE BY THE
3 UNITED STATES ANYWAY, ISN'T IT? YOU'VE ADVOCATED A SENTENCE
4 OF SOMEWHERE BETWEEN 200 AND 300 MONTHS. SO WE'RE SEVEN
5 MONTHS SHY OF THE HIGH END, BUT CLEARLY OVER THE 200 MONTHS.
6 SO TO THE EXTENT THE GOVERNMENT HAS OBJECTIONS TO THE
7 GUIDELINES CALCULATIONS, THESE CALCULATIONS SQUARE WITH THE
8 RECOMMENDATION.

9 NOW, MR. GERAGOS, I'M HAPPY TO LET YOU RESPOND TO
10 ANY OR ALL OF THIS, BUT THAT'S WHERE I AM TENTATIVELY ON THE
11 ONE FACTOR OF THE GUIDELINES.

12 MR. GERAGOS: I UNDERSTAND THE COURT'S REASONING. I
13 HATE TO BE IN A POSITION WHERE I'M CONTINUING TO SAY
14 REASONABLE MINDS MAY DISAGREE. YOU AND I OBVIOUSLY BOTH SAT
15 HERE DURING THIS TRIAL. I KNOW THE COURT TOOK THE POSITION --
16 AND I'LL START WITH THE LAST ONE FIRST -- THAT THE TESTIMONY
17 WAS UNTRUTHFUL ABOUT THE PROSTITUTES. THE PROBLEM WITH THAT
18 IS ONE OF THE THINGS THAT I'VE DISCOVERED SUBSEQUENTLY TO THAT
19 IS THAT THERE ARE STATEMENTS BY CUNNINGHAM HIMSELF TO OTHERS
20 THAT'S IN THE DISCOVERY SINCE THE TRIAL THAT INDICATES THAT IT
21 WAS JOEL COMBS WHO WAS THE ONE WHO WAS RESPONSIBLE FOR THAT.
22 YOU TALK ABOUT THINGS THAT ARE KIND OF VEXING AS TO WHO NUDGED
23 FIRST OR WHO DIDN'T NUDGE FIRST.

24 ONE OF THE THINGS THAT'S BEEN VEXING THAT YOU JUST
25 REFERRED TO IS WHY WOULD YOU FLY THREE PEOPLE OVER HERE FROM

1 HAWAII, PUT THEM ON THE STAND, AND NEVER TURN AND ASK THE
2 QUESTION "IS THIS THE GENTLEMAN?" AND I THINK THERE'S A REAL
3 PROBLEM THERE. I THINK THE COURT RECOGNIZED IT AT THE TIME.
4 AND I APPRECIATE THE FACT BECAUSE IT IS RARE. I THINK YOU AND
5 I BOTH KNOW IN TRYING CASES THAT IT'S A RARE JUDGE THAT DOES
6 NOT PUNISH YOU FOR GOING TO TRIAL.

7 UNFORTUNATELY, THE IDEA THAT WHOEVER WINS GETS TO
8 WRITE THE HISTORY, THAT'S A REALITY. YOU ACCEPT IT, I ACCEPT
9 IT, AND WE DEAL WITH IT.

10 THE COURT: I ASSURE YOU THAT'S NOT SO WITH ME. I
11 HAVE MANY CASES WHERE DEFENDANTS TESTIFY AND I DON'T APPLY THE
12 OBSTRUCTION OF JUSTICE. IN THIS CASE, I LISTENED TO THE
13 TESTIMONY MYSELF. AND THE REFLECTIONS I GAVE REGARDING THAT
14 ONE ASPECT AND THEN RESPECT FOR THE JURY'S FINDINGS ON WHETHER
15 THIS WAS AN INVESTMENT OR A BRIBE COMPELS ME TO THE CONCLUSION
16 THAT MR. WILKES DID NOT TELL THE TRUTH. IT'S NO INEXORABLE.
17 IT'S NOT REACTIONARY OR INSTINCTIVE. I LISTENED TO IT MYSELF.
18 IT DIDN'T HAVE THE RING OF TRUTH TO IT.

19 MR. GERAGOS: AND I UNDERSTAND. LOOK, IF I COULDN'T
20 CONVINCE THE JURY, I DON'T THINK I'M GOING TO CHANGE YOUR MIND
21 ON IT.

22 THE PROBLEM IS IS WHERE -- I COULD GO THROUGH AND
23 LIST EVERY SINGLE FACTOR, SO TO SPEAK. AND I CAN ARGUE, I
24 THINK, AND WE HAVE IN THE PAPERWORK ARGUED IT. ULTIMATELY,
25 THOUGH, IT'S ALMOST LIKE WE'VE COME FULL CIRCLE IN THE LAST

1 25 YEARS. THE GUIDELINES ARE NO LONGER MANDATORY. SO WE GET
2 BACK TO, I BELIEVE, WE CAN ARGUE ABOUT THIS. WE CAN ARGUE
3 ABOUT THAT. BUT AT THE END OF THE DAY, IT'S ALMOST LIKE WE'RE
4 BACK IN THE EARLY '80'S. WE COME DOWN TO WHAT IS A FAIR AND
5 WHAT IS A JUST SENTENCE?

6 THIS COURT IS MORE THAN BRIGHT ENOUGH AND MORE THAN
7 EXPERIENCED ENOUGH TO BE ABLE TO GET TO WHEREVER THE COURT
8 WANTS TO BASED ON THE GUIDELINES. I THINK THAT THE LAST
9 PRONOUNCEMENTS BY THE U.S. SUPREME COURT HAVE BROUGHT US BACK
10 TO A PRE-GUIDELINE ERA. WE HAVE A SITUATION NOW WHERE THE
11 GUIDELINES ARE ADVISORY. WE CAN GO THROUGH ALL OF THIS
12 RIGMAROLE. BUT WHEN IT COMES DOWN TO IT, WE FINALLY HAVE
13 RETURNED TO THE COURTS, I THINK RIGHTFULLY SO, THE ABILITY TO
14 IMPOSE JUSTICE.

15 AND IN THIS CASE -- AND I DON'T KNOW, AND I'M
16 PROBABLY GETTING AHEAD OF MYSELF IN TERMS OF THE PROTOCOL.
17 BUT IN THIS CASE, THE COURT HAS FOUND THAT MR. CUNNINGHAM WAS
18 PROBABLY THE RINGLEADER. I THINK THAT THAT'S ACCURATE.
19 THAT'S THE ONLY WAY -- THE GOVERNMENT HAS TAKEN THAT POSITION
20 ALL ALONG. OBVIOUSLY, HE ENTERED INTO A PLEA AGREEMENT FOR
21 WHATEVER IT WAS THAT WOULD EXPOSE HIM UP TO TEN YEARS.
22 OBVIOUSLY, AS THE COURT STATED, MITCH WADE, IF HE DOES A DAY,
23 I WILL BE SHOCKED, AND I'D BE WILLING TO DONATE MONEY TO YOUR
24 FAVORITE CHARITY IF HE DOES ANY TIME WHATSOEVER.

25 I WOULD VENTURE TO SAY THAT GIVEN THE AMOUNT OF

1 MONEY HE MADE, I STILL CANNOT GET OVER THE FACT THAT HE WAS
2 ABLE TO SELL HIS BUSINESS/PROPERTY FOR \$20 MILLION. THE
3 GOVERNMENT DIDN'T GET IN THE MIX OF THAT AT ALL. AND YET
4 THEY'VE BEEN "TORTURING," FOR LACK OF A BETTER TERM, MY CLIENT
5 WITH HIS DIVORCE PROCEEDINGS FOR EVERY NICKEL AND DIME THAT
6 WENT IN ANY DIRECTION. AND THERE'S \$20 MILLION OUT THERE THAT
7 THEY NEVER SOUGHT NOR SO MUCH AS PUT A PARAGRAPH INTO THE PLEA
8 AGREEMENT. AND THEN JOEL COMBS, I ASSUME, IS A FREE PASS.
9 YOU COME DOWN TO IT, THIS GUY DECIDES HE'S GOING TO GO TO
10 TRIAL.

11 NOW, THE JURY SPOKE. OBVIOUSLY, I COULDN'T DISAGREE
12 MORE WITH THE JURY VERDICT. BUT I, LIKE YOU, RESPECT THE JURY
13 DECISIONS, AND I'M NOT GOING TO SECOND-GUESS HERE THE JURY. I
14 WILL OBVIOUSLY OR MY SUCCESSOR WILL, IF THE COURT GRANTS THE
15 MOTIONS THAT HAVE BEEN FILED IN THE COURT OF APPEAL, DEAL WITH
16 IT ACCORDINGLY.

17 I THINK THAT MR. WILKES HAS A STATEMENT THAT HE
18 WANTS TO MAKE AS WELL. WHEN IT COMES DOWN TO IT, THE KINDS OF
19 NUMBERS THAT WE'RE TALKING ABOUT I THINK ARE ABSURD. I
20 UNDERSTAND THE -- WHETHER IT'S THE PUBLIC PRESSURE, THE PUBLIC
21 OPINION, THINGS OF THAT NATURE. BUT WHEN YOU TALK ABOUT
22 CUNNINGHAM GETTING EIGHT YEARS -- AND I THINK I WENT BACK AND
23 TOOK A LOOK AT SOME OF THE THINGS THAT THE COURT HAD SAID.
24 YOU HAD LOOKED, I THINK, AT THE ENTIRE LANDSCAPE AT THE TIME.
25 I THINK THERE WAS A CASE OUT OF OHIO, AND YOU HAD USED THAT TO

COMPUTER-AIDED TRANSCRIPTION

1 SAY, "WHERE WOULD I PUT HIM IN IN THE SCHEME OF THINGS?"

2 AND THE IDEA TO BE ASKING FOR WHETHER IT'S 60 YEARS
3 OR 25 YEARS, GIVEN MR. LERACH, WHO WAS HERE AND JUST RECEIVED
4 A TWO-YEAR SENTENCE ON A CRIME THAT LITERALLY FOR YOU AND I
5 AND FOR ALL THE LAWYERS SITTING OVER AT THE GOVERNMENT'S TABLE
6 CERTAINLY STRIKES AT THE VERY CORE OF THE LEGAL SYSTEM, THAT'S
7 TWO YEARS. HE PAID SOME FINE, WHICH I THINK IS PROBABLY THE
8 AMOUNT THAT HE PAYS IN REFERRAL FEES TO WHOEVER BRINGS HIM ONE
9 CLASS-ACTION CASE.

10 SO I DON'T -- I'M GOING TO SUBMIT, IF YOU WILL, ON
11 THE ANALYSIS AND WHAT THE COURT HAS DONE IN MY PREVIOUS
12 OBJECTIONS. I'D LIKE TO MOVE FORWARD, IF I COULD, TO MAKING
13 AN ARGUMENT.

14 THE COURT: ANYTHING ELSE THE GOVERNMENT WANTS TO
15 SAY ON THE MATTER OF GUIDELINE CALCULATIONS?

16 MR. BHANDARI: BRIEFLY ON TWO POINTS.

17 FIRST WITH RESPECT TO ROLE, YOUR HONOR, WE
18 ACKNOWLEDGE THE COURT'S COMMENTS AND THE COURT POINTING OUT
19 OUR PRIOR COMMENTS IN THE LAST PROCEEDINGS. AS THE COURT
20 KNOWS, BECAUSE YOUR HONOR HAS REVIEWED THE TRANSCRIPT OF THE
21 CUNNINGHAM SENTENCING, YOUR HONOR AT THE TIME HESITATED. AND
22 ULTIMATELY, YOU AWARDED NO ROLE ADJUSTMENT WHATSOEVER TO
23 CUNNINGHAM BECAUSE AT THE TIME THE FACTS WERE UNDEFINED. YOU
24 FELT LIKE YOU DIDN'T HAVE ENOUGH EVIDENCE.

25 THE COURT: IT REMAINS LIKE THAT FOR ME,

1 MR. BHANDARI. I STILL AM OF TWO MINDS AS TO WHO WAS THE PRIME
2 MOVER HERE AND WHETHER THERE WAS MORE THAN ONE. MAYBE I
3 SHOULD REGARD BOTH MR. CUNNINGHAM AND MR. WILKES AS THE PRIME
4 MOVERS.

5 THE ANALYSIS BEGINS TO FALL APART -- AS I SAID, I
6 HAVE TO FIND THAT THERE WERE MORE THAN FIVE. HE WAS A
7 COMPETITOR OF WADE AT ONE POINT. HE DIDN'T KNOW KONTOGIANNIS
8 AND JOHN MICHAEL. THOSE WERE CUNNINGHAM CONTACTS. IT JUST
9 STRIKES ME AS UNFAIR WHEN YOU CONCEDE THAT I HAVE TO BE
10 CONVINCED BY CLEAR AND CONVINCING EVIDENCE TO STICK HIM WITH A
11 FOUR-POINT ADJUSTMENT FOR THAT. IN GOOD CONSCIENCE, I CAN'T
12 MAKE THE FINDING TO SUPPORT THAT.

13 MR. BHANDARI: I UNDERSTAND YOUR HONOR'S RULING ON
14 THAT. FRANKLY, THE GOVERNMENT IS INFORMED NOW BY AN
15 ADDITIONAL YEAR OF INVESTIGATION FROM THE TIME THAT WE
16 PRESENTED MATTERS TO YOUR HONOR AT THE CUNNINGHAM SENTENCING.
17 WHAT I'D LIKE YOUR HONOR TO ALSO FOCUS ON IS THIS ISSUE OF
18 WHETHER A TWO-LEVEL ADJUSTMENT IS MANDATED BY THE GUIDELINES.
19 WE WOULD SUBMIT THAT IT IS.

20 THE EVIDENCE IS CLEAR AND IT'S UNCONTROVERTED THAT
21 AT LEAST JOEL COMBS WAS DIRECTED BY THE DEFENDANT, WAS A
22 CRIMINALLY RESPONSIBLE PARTICIPANT AND TESTIFIED AS SUCH.
23 MR. GERAGOS NOW OBJECTS TO HIM GETTING A FREE PASS. IT'S
24 CLEAR THAT JOEL COMBS WAS REPORTING TO THE DEFENDANT AND DOING
25 WHAT THE DEFENDANT SAID. SO AT LEAST A TWO-POINT ADJUSTMENT

1 IS MANDATED. EVEN IF YOUR HONOR FINDS THAT MR. WILKES WAS NOT
2 THE OVERALL LEADER, THE CASE LAW INDICATES THAT HE CAN BE A
3 MANAGER.

4 THE COURT: WHAT'S THE CONTEXT? WHAT DID COMBS DO
5 TO FURTHER THE ILLEGAL -- I KNOW HE PROCURED THE PROSTITUTES
6 FOR THE TWO IN HAWAII. I'VE SO FOUND. WHAT ELSE?

7 MR. BHANDARI: HE WAS THE INTERMEDIARY ON ALL OF THE
8 BILLS OF MATERIAL, WHICH WERE THE OBJECTS OF THE BRIBERY.
9 MR. WILKES OBTAINED THOSE CONTRACTS. MR. COMBS WAS THE PERSON
10 WHO WAS THE INTERMEDIARY.

11 MR. COMBS ALSO DIRECTLY SUPPLIED OTHER BRIBES; THE
12 SOFTWARE FOR THE BOAT, A COMPUTER, THE COMPUTER DESK THAT HE
13 DIRECTLY DELIVERED. THERE WERE NUMEROUS OTHER BENEFITS THAT
14 MR. COMBS PROVIDED AT MR. WILKES'S BEHEST. THERE WAS TRIAL
15 TESTIMONY ABOUT MR. WILKES GIVING MR. COMBS MONEY TO LOSE TO
16 CUNNINGHAM IN POKER. SO IN MANY, MANY WAYS, THE TRIAL
17 EVIDENCE ESTABLISHED THAT COMBS ACTED IN A CRIMINAL WAY AT
18 WILKES'S DIRECTION. THAT EVIDENCE IS NO CONTRADICTED. SO
19 WITH RESPECT TO ROLE, WE WOULD SUBMIT THAT A TWO-LEVEL
20 ADJUSTMENT IS STILL MANDATED.

21 WITH RESPECT TO THE BENEFIT, ALSO, WE -- I
22 UNDERSTAND YOUR HONOR'S COMMENTS THAT THERE HAS TO BE SOME
23 VALUE TO THIS AND THAT THE GOVERNMENT GETS SOME BENEFIT OUT OF
24 THE FACT THAT THERE WERE THESE IMAGES, WHATEVER QUALITY THEY
25 ARE.

1 THE COURT: THAT WAS JUST ONE EXAMPLE. THERE'S A
2 STOCKPILE OF COMPUTERS, MR. BHANDARI, THAT THEY GOT. NOW, DID
3 MR. WILKES GET THEM A LOT LESS EXPENSIVELY? COULD THE
4 GOVERNMENT HAVE GONE OUT AND GOTTEN THEM FOR PENNIES ON THE
5 DOLLAR? I THINK THE ANSWER IS YES.

6 BUT YOU AND I BOTH KNOW THAT THE GOVERNMENT OPERATES
7 INEFFICIENTLY. WE PAY TOO MUCH FOR THINGS. THERE'S NOT
8 ENOUGH OVERSIGHT. THEY DON'T HANDLE THINGS AS YOU AND I
9 HANDLE OUR FAMILY BUDGETS. THEY'RE NOT SMART SHOPPERS ABOUT
10 THINGS. THE DIFFICULTY I HAVE WITH THAT IS SAYING, "OKAY. I
11 GOT WHAT THEY PAID. I GOT WHAT THIS IS LIKELY WORTH." BUT
12 HOW DO I FIND WHAT'S AN UNFAIR BENEFIT THAT HE GOT OR WHAT IS
13 TOO MUCH OR WHAT IS THE REAL VALUE OF THIS? SOME OF IT IS
14 INTANGIBLE, LIKE THE FUTURE VALUE OF THAT MAPPING SERVICE IN
15 THE PANAMA CANAL DISTRICT. AS I SAID, IF THERE'S A PROBLEM
16 DOWN THERE, THEN THOSE MAPS ARE GOING TO BE WORTH QUITE A LOT.
17 PROBABLY MORE THAN THE GOVERNMENT PAID. THE COMPUTERS, THE
18 TECHNOLOGY CHANGES ALL THE TIME.

19 SO IT'S VERY DIFFICULT. AND I KNOW YOU'VE CITED A
20 CASE THAT SAYS I DON'T HAVE TO DO IT WITH PRECISION. THE
21 PROBLEM I HAVE IS THAT THE OTHER TWO METHODS OF COMING AT
22 VALUATION ARE SO IMPRECISE THAT I THINK IT WOULD BE UNFAIR FOR
23 ME TO RELY ON THOSE. AT THE END OF THE DAY, MR. BHANDARI,
24 WHAT DOES IT MATTER? THE GUIDELINE RANGE THAT I'VE REACHED
25 APPLYING THESE IN WHAT I FIND TO BE A VERY CONSERVATIVE

1 FASHION COMES WITHIN THREE MONTHS OF THE UPPER END OF THE
2 SENTENCE THE UNITED STATES IS ADVOCATING HERE.

3 MR. BHANDARI: YOUR HONOR, WHAT I'LL DO IS SIMPLY TO
4 EXPLAIN. WE MAINTAIN THE POSITION THAT WE MAINTAINED IN OUR
5 PAPERS. WE THINK THAT THERE IS ADEQUATE EVIDENCE FOR THE
6 COURT TO FIND AT LEAST ON THE NET BENEFIT MEASURE -- LET ME
7 SPEAK VERY QUICKLY ON THAT. I THINK WE'LL BE ABLE TO ADDRESS
8 ALL THIS, AS YOUR HONOR INTIMATED, WHEN WE TALK MORE GENERALLY
9 ABOUT HIS APPROPRIATE SENTENCE IN LIGHT OF THE ALL THE FACTS
10 UNDER 3553(A).

11 WITH RESPECT TO THE GUIDELINES AND THE NET BENEFIT,
12 THE NET BENEFIT IS STRICTLY AN OBJECTIVE MEASURE. IT'S THE
13 REVENUES MINUS THE DIRECT COSTS, BASICALLY THE COST OF GOODS
14 SOLD. ALL OF THOSE THINGS ARE SUBJECT TO OBJECTIVE
15 DETERMINATION. YOU LOOK AT HOW MUCH THE PERSON GOT UNDER THE
16 CONTRACT FOR REVENUES. YOU LOOK AT WHAT THEIR EQUIPMENT COSTS
17 WERE. THOSE ARE THE DIRECT COSTS. YOU SUBTRACT THEM OUT, AND
18 YOU HAVE AN OBJECTIVE NUMBER. AND WE'VE DONE THAT. WE'VE
19 DONE THAT BY TALKING TO ALL THREE OF THE PEOPLE WHO WERE MOST
20 RESPONSIBLE FOR THESE BILLS OF MATERIAL, WHICH, IN OUR VIEW,
21 ARE THE MOST OBJECTIONABLE FOR THE PROFIT MARGIN.

22 AND ALL THREE OF THEM SAY, "THE GOVERNMENT'S
23 CALCULATIONS ARE ACCURATE. THAT'S WHAT HE GOT. THAT'S WHAT
24 WE SUPPLIED. THOSE ARE INDEED THE COSTS." AND THOSE PEOPLE
25 INCLUDE ARNOLD BORROMEO, THE CONTROLLER.

1 THE COURT: IN THE CONTEXT OF GOVERNMENT
2 CONTRACTING, IT JUST SEEMS UNFAIR. THE GOVERNMENT WILL ENTER
3 INTO FIRM FIXED CONTRACTS WHERE THEY'LL SAY, "WE DON'T CARE
4 HOW MUCH IT COST YOU. WE'LL PAY THIS AMOUNT. AND WE
5 UNDERSTAND THAT -- AND IT PROBABLY IS THE CASE THAT IN MOST
6 CASES, WE'RE GOING TO END UP WITH THE SHORT END OF THE STICK.
7 WE'RE GOING TO OVERPAY FOR THINGS, BUT WE WANT THEM. AND IF
8 WE'RE WRONG AND IT COSTS MORE, THEN YOU STILL HAVE TO PROVIDE
9 THEM AT THAT PRICE."

10 IN THE CONTEXT OF A SITUATION LIKE THAT, WHICH IS
11 IMPLICATED HERE, THAT'S NOT A FAIR MEASURE TO USE. IF YOU
12 CONCEDE THAT THE GOVERNMENT GENERALLY PAYS TOO MUCH FOR
13 THINGS, THEN ANYBODY IN A GOVERNMENT CONTRACT CASE LIKE THIS
14 ONE IS GOING TO END UP WITH AN INCREDIBLE NUMBER ASSOCIATED
15 WITH THE LOSS WHEN THAT'S JUST NOT TRUE.

16 MR. BHANDARI: A COUPLE OF THINGS ON THAT REAL
17 QUICK.

18 THE COURT: DO YOU DISAGREE WITH THAT?

19 MR. BHANDARI: WELL, I DO. NOBODY CONTRACTS
20 REGULARLY AND REPEATEDLY WITH THE GOVERNMENT, EXTRACTS THOSE
21 KINDS OF PROFIT MARGINS, DELIVERS MATERIALS THAT THE
22 GOVERNMENT IS DISSATISFIED WITH OVER AND OVER AGAIN UNLESS
23 THEY'RE BRIBING SOMEBODY. THAT'S WHAT WE HAVE HERE. I'M ONLY
24 GOING TO TALK ABOUT THIS BRIEFLY BECAUSE I THINK THE ANALYSIS
25 IS THERE'S THE GUIDELINE ISSUE, AND THEN THERE'S THE 3553(A)

1 ISSUE. WE THINK THIS ISSUE INFORMS THAT. YOU CAN'T CONTRACT
2 REPEATEDLY AND EXTRACT THOSE KINDS OF ASTONISHING AND
3 UNREASONABLE PROFITS REPEATEDLY WITH THE GOVERNMENT. MAYBE
4 YOU CAN DO IT ONCE. MAYBE YOU CAN DO IT TWICE. BUT FIVE
5 TIMES IN A ROW, WHICH IS WHAT WE HAD HERE --

6 THE COURT: MR. BHANDARI, LET ME ACCEPT THAT POINT.
7 THEN THE CONSIDERATION I HAVE AND THE DETERMINATION I HAVE TO
8 MAKE IS ONE STEP BEYOND THAT. I'VE GOT TO SAY, "OKAY. WHAT
9 IS THAT AMOUNT, THEN? WHAT'S THE AMOUNT?"

10 AND WHAT I'M TELLING YOU IN THE GOVERNMENT CONTRACT
11 CONTEXT, I THINK IT'S UNFAIR FOR ME TO JUST USE THE MECHANICAL
12 FORMULATION THAT MIGHT OTHERWISE BE FAIR IN ANY OTHER CONTEXT.
13 IF WE AGREE THAT THE GOVERNMENT UNIFORMLY, EVEN IN A
14 NON-CRIMINAL CONTEXT, PAYS TOO MUCH FOR STUFF, IT'S NOT A FAIR
15 CALCULUS HERE. THAT'S THE DIFFICULTY I'M HAVING WITH IT.
16 THAT PLUS, AS I SAID, THERE'S AN EASIER AND MUCH MORE
17 CONSERVATIVE AND RELIABLE METHOD THAT I CAN SLEEP WITH AT
18 NIGHT, WHICH IS TO SAY WHAT WAS THE AMOUNT OF THE BRIBES?

19 AND MR. GERAGOS DIDN'T SPEAK TO THIS. I KNOW HE
20 OBJECTS. I KNOW HE'S TAKEN THE POSITION THOSE WEREN'T BRIBES.
21 THE JURY HAS FOUND TO THE CONTRARY. I'VE FOUND TO THE
22 CONTRARY. AND THAT GETS US UP TO 14 POINTS BECAUSE HE'S
23 BETWEEN 400,000 AND A MILLION BUCKS IN BRIBES.

24 MR. BHANDARI: I UNDERSTAND YOUR HONOR'S POSITION.
25 MAYBE AT THIS POINT IT WOULD BE BEST TO TURN TO THE 3553(A)

1 ANALYSIS.

2 THE COURT: LET ME TURN BACK TO MR. GERAGOS.

3 MR. GERAGOS, I'M HAPPY TO HEAR ANYTHING YOU WANT TO
4 TELL ME ON THE MATTER OF ULTIMATELY SENTENCING. I'LL BE HAPPY
5 TO HEAR FROM MR. WILKES. I KNOW YOU HE HAS COMMENTS HE WANTS
6 TO MAKE AS WELL.

7 MR. GERAGOS: ACTUALLY, I'D LIKE HIM TO ADDRESS YOU
8 FIRST.

9 THE DEFENDANT: BEFORE ADDRESSING THE COURT, IF I
10 COULD, I'D LIKE TO ADDRESS SOME OF MY FAMILY AND FRIENDS THAT
11 ARE HERE, ESPECIALLY MY KIDS AND MY MOTHER, WHO HAVE BEEN
12 EXTREMELY SUPPORTIVE OF ME. I KNOW THEY UNDERSTAND HOW
13 HELPLESS I'VE FELT IN THIS PROCESS BY BEING TOLD REPEATEDLY I
14 CAN'T SPEAK OUT. I HAD MY FEW HOURS ON THE STAND, AT WHICH
15 TIME I GOT TO SAY VERY LITTLE OF WHAT I HAVE TO SAY. BUT TO
16 THE EXTENT THAT I'VE FELT HELPLESS, I KNOW THAT THEY FEEL EVEN
17 MORE HELPLESS. SO THANK YOU.

18 YOUR HONOR, AS YOU'RE AWARE, I'VE ALWAYS MAINTAINED
19 MY INNOCENCE AND CONTINUE TO DO SO. EVEN AS I CONTINUE TO
20 WORK WITHIN THE SYSTEM TO REVERSE THIS WRONGFUL CONVICTION, I
21 ACKNOWLEDGE RIGHT NOW WE'RE IN THE NEXT PHASE OF THE
22 PROCEEDING WHERE YOU MUST FIX A PUNISHMENT.

23 I DO WISH TO SAY THAT I BELIEVE IN THE JUSTICE
24 SYSTEM, AND I'VE ALWAYS RESPECTED YOUR AUTHORITY AND YOUR
25 DECISIONS EVEN WHEN I DIDN'T ALWAYS AGREE WITH THEM. I WOULD

COMPUTER-AIDED TRANSCRIPTION

1 ASK THAT IN SENTENCING ME, YOU VIEW MY ENTIRE LIFE AND
2 WHATEVER GOOD I'VE TRIED TO DO WITH IT AND NOT JUST THE
3 PICTURE WHICH I DON'T BELIEVE IS ACCURATE THAT THE PROSECUTION
4 HAS TRIED TO PAINT OF ME.

5 I ONLY ASK YOU, IN EXERCISING YOUR SENTENCING
6 AUTHORITY UPON ME, TO CONSIDER THAT I AM A MAN THAT CARES
7 DEEPLY FOR MY FAMILY, FOR THIS COMMUNITY, FOR MY COUNTRY, AND
8 I'VE ALWAYS TRIED TO ASSIST PEOPLE WHO HAVE FALLEN UPON
9 DIFFICULT TIMES. I NOW FIND MYSELF IN THE POSITION OF BEING
10 ONE OF THOSE PEOPLE. AND I HOPE THAT ALL THE ASSISTANCE I'VE
11 SHOWN TO OTHERS AND MY DEVOTION TO MY FAMILY AND MY COUNTRY
12 WILL BE CONSIDERED BY YOU.

13 THANK YOU.

14 THE COURT: THANK YOU, MR. WILKES.

15 MR. GERAGOS.

16 MR. GERAGOS: THANK YOU, YOUR HONOR.

17 TO PICK UP WHERE I LEFT OFF BEFORE, I THINK THE
18 COURT PROBABLY AGREES WE'RE AT A POINT NOW IN THE FEDERAL
19 SYSTEM, AT LEAST, THAT IT'S UP TO THE COURT, WITH THE
20 ASSISTANCE OF THE SENTENCING GUIDELINES, TO DO JUSTICE. AND I
21 KNOW THAT YOUR HONOR'S REPUTATION IS ONE OF "I'LL GIVE YOU A
22 FAIR TRIAL, AND THEN CHARITABLY I'LL GIVE YOU A HARSH
23 SENTENCE." I'M AWARE OF THAT.

24 THE COURT: IS THAT SO?

25 MR. GERAGOS: THAT TENDS TO BE YOUR REPUTATION.

COMPUTER-AIDED TRANSCRIPTION

1 FAST TO TRIAL, FAIR TRIAL, AND THEN YOU BRING DOWN THE HAMMER.
2 I UNDERSTAND THAT. I DON'T KNOW THAT I WOULD WANT A JUDGE ANY
3 OTHER WAY, I SUPPOSE.

4 WHAT I WOULDN'T WANT, HOWEVER, IS A SENTENCE IN A
5 CASE THAT I LIVED AND BREATHED -- AND I KNOW THAT YOU CAN --
6 YOU DID AS WELL, WHICH WAS, IN LARGE PART, I THINK, TO SOME
7 DEGREE, OVERBLOWN. I KNOW THE COURT HAS CHARACTERIZED THIS
8 CASE, AT LEAST A LARGE PORTION OF IT, MAYBE HALF OF IT, AS THE
9 WITNESSES TURNING OUT TO BE MORE FAVORABLE TO MR. WILKES THAN
10 UNFAVORABLE.

11 I THINK THE REAL REASON BEHIND THAT WASN'T ANY SKILL
12 OF MINE IN CROSS-EXAMINATION OR ANYTHING ELSE. I THINK IT WAS
13 THE GOVERNMENT'S FUNDAMENTAL MISCHARACTERIZATION AND
14 MISUNDERSTANDING OF WHAT REALLY GOES ON.

15 AND I THINK THAT IT BECAME APPARENT ONCE YOU -- WE
16 HAD A SUCCESSION OF LOBBYIST AFTER LOBBYIST TRYING TO DRAPE
17 THEMSELVES IN THESE ROBES OF ANGELIC CHARACTER AND LEADING
18 THEMSELVES AND LEADING THE JURY, AT LEAST, TO BELIEVE THAT
19 "OH, MY GOD. AS SOON AS I HEARD ABOUT ANY OF THIS, I WAS
20 AGHAST" AT THE SAME TIME THAT THEY HIRED SENATOR NELSON -- THE
21 ONE GUY, HE HIRED SENATOR NELSON'S SON AS HIS DIRECTOR OF
22 PROMOTIONS WHILE SENATOR NELSON WAS GETTING HIM EARMARKS IN
23 THE TENS OF MILLIONS OF DOLLARS. THE OTHER GUY WHO'S CLAIMING
24 TO BE AS PURE AS THE DRIVEN SNOW AT THE SAME TIME THAT HE'S
25 GOT \$20 MILLION IN EARMARKS THAT HE'S PUTTING ON HIS WEBSITE.

COMPUTER-AIDED TRANSCRIPTION

1 SO I UNDERSTAND FROM THE GOVERNMENT'S STANDPOINT
2 ECHOING WHAT I SAID BEFORE THAT WE DON'T GET TO REWRITE THE
3 HISTORY. BUT YOU AND I WERE HERE, AND WE WATCHED THE HISTORY.
4 AND AS THE HISTORY UNFOLDED, I THINK -- AND I LOVED THAT ONE
5 WAITER, MR. HORSFALL. I ASKED THE ONE QUESTION. I NEVER MET
6 THE GUY BEFORE. BUT I ASKED "HAVE YOU EVER SEEN A CONGRESSMAN
7 WHO WALKED IN THERE EVER AND PICKED UP A TAB?"

8 THE COURT: NEVER IN 15 YEARS.

9 MR. GERAGOS: NEVER IN 15 YEARS. THE GUY'S BEEN
10 THERE SINCE THE DAY THE CAPITAL GRILLE OPENED, AND HE'S NEVER
11 SEEN A CONGRESSMAN PICK UP A TAB IN 15 YEARS.

12 SO IT BECAME ALMOST AS THE PROSECUTION HERE -- I
13 ALMOST FELT HALFWAY THROUGH IT ALMOST BECAME A SURROGATE FOR
14 THE GOVERNMENT WANTING TO PROSECUTE THE SYSTEM ITSELF AS
15 OPPOSED TO MR. WILKES. I UNDERSTAND THAT THE JURY FOUND THE
16 100,000, AND I UNDERSTAND THE JURY FOUND THE 525-. I COULDN'T
17 DISAGREE MORE, BUT I UNDERSTAND THAT. I UNDERSTAND THAT THE
18 COURT, TO SOME DEGREE, IS BURDENED AND EMBRACES THAT.

19 BUT ULTIMATELY, THE IDEA, ECHOING WHAT MR. BHANDARI
20 WAS SAYING RIGHT HERE, THAT GOVERNMENT CONTRACTS STILL OPERATE
21 THAT WAY, WHO'S HE KIDDING? I BLURTED OUT TO HIM OLIVER WAS A
22 PERFECT EXAMPLE. HE SAYS NOBODY COMES BACK AND FEEDS AT THE
23 TROUGH REPEATEDLY. HELLO. LOOK AT THE 10D5'S THAT WERE FILED
24 WITH THE SEC OF THE GOVERNMENT CONTRACTORS, THE SINGLEMOST
25 PROFITABLE INDUSTRY. IT'S VIRTUALLY RECESSION-PROOF. IT'S

1 JUST NONSENSE.

2 SO WHEN YOU COME DOWN TO IT, WHAT IS THE UNIVERSE --
3 I THINK THE PROPER UNIVERSE FOR THIS COURT TO IMPOSE A
4 SENTENCE? AND I THINK OBVIOUSLY THE PROPER UNIVERSE HAS TO BE
5 WHAT I WAS INDICATING BEFORE. WHAT'S OUR BASELINE? OUR
6 BASELINE IS IF IT'S DUKE CUNNINGHAM WHO'S THERE -- THERE'S A
7 PRETTY GOOD ARGUMENT HERE. IF YOU ACCEPT EVERYTHING THAT THEY
8 PUT INTO THIS CASE AND THE WAY WE OUTLINED IT FOR THE JURY,
9 THERE'S A PRETTY GOOD ARGUMENT -- AND THEY MADE IT -- THAT
10 MITCH WADE TOOK IT TO THE NEXT LEVEL. THAT WAS THEIR
11 ARGUMENT.

12 DURING THE CROSS-EXAMINATION, AS YOU HAD INDICATED,
13 MITCH WADE ADMITTED THAT THERE WAS A CERTAIN POINT WHEN HE
14 CROSSED THE LINE. YOU'LL REMEMBER HE TESTIFIED. WHEN HE
15 CROSSED THE LINE WAS WHEN HE WENT ANTIQUE SHOPPING, AND THEN
16 HE STARTED TO DO THE OTHER THINGS. THAT'S WHEN HE FELT LIKE
17 "THIS ISN'T THE WAY THAT WASHINGTON IS SUPPOSED TO WORK." HE
18 HID ALL OF THAT FROM MR. WILKES.

19 YOU THEN FAST-FORWARD TO HE DECIDED AT THAT POINT
20 THAT HE WASN'T GOING TO PLAY THE GAME ANYMORE. HE WAS GOING
21 TO COME CLEAN. WELL, I DON'T THINK THIS COURT IS THE COURT
22 THAT'S GOING TO SENTENCE HIM. I THINK THIS COURT WOULD HAVE A
23 LOT TO SAY IF THIS COURT WERE THE ONE THAT WAS GOING TO
24 SENTENCE HIM. I BELIEVE THAT TO MY BONES.

25 WHEN I MADE THAT OFFER BEFORE TO MAKE ANY CHARITABLE

1 DONATION OF YOUR CHOICE IF HE DOES ANY TIME WHATSOEVER OTHER
2 THAN MAYBE HOUSE ARREST, I'M BANKING ON THE FACT THAT THIS
3 COURT IS NOT GOING TO SENTENCE HIM. BECAUSE IF THIS COURT WAS
4 GOING TO SENTENCE SOMEBODY AS REALLY THE PERSON WHO IS
5 ORCHESTRATING OUTSIDE OF CONGRESSMAN CUNNINGHAM, IT WOULD HAVE
6 TO BE MITCH WADE.

7 NOT ONLY DOES MITCH WADE GO OUT THERE AND BRAZENLY
8 TAKE IT TO A NEW LEVEL, AS THE GOVERNMENT SAYS, HE THEN GOES
9 ON -- AND, AS THE COURT KNOWS -- WE RAISED IT IN THE PAPERS
10 FOR THE MOTION FOR A NEW TRIAL -- HE THEN ENGAGES IN A SCHEME,
11 A CAMPAIGN MONEY-LAUNDERING SCHEME, IN WHICH HE HIMSELF ON THE
12 STAND ADMITTED THAT HE WAS BUYING BASICALLY CONTRACTS BY
13 DONATING TO THESE PARTICULAR -- I THINK IT WAS ONE SENATOR AND
14 ONE CONGRESS PERSON. HE DOESN'T GET PROSECUTED FOR THAT AT
15 ALL.

16 THE GOVERNMENT HAS MADE AN ARGUMENT -- AND I DON'T
17 WANT TO REHASH IT -- BUT JUST IN TERMS OF YET ANOTHER FREE
18 PASS HE GETS, THEY'VE MADE AN ARGUMENT "WELL, THERE'S BEEN NO
19 INDICATION THAT WE HAD ANYTHING TO DO WITH NOT PROSECUTING
20 HIM." THEY'RE PROSECUTING RIGHT NOW A VERY PROMINENT LAWYER
21 IN MICHIGAN FOR MUCH LESS. MR. FEINBERGER'S BEEN INDICTED IN
22 MICHIGAN FOR A CAMPAIGN MONEY-LAUNDERING SCHEME, WHICH DOES
23 NOT HAVE THE PERNICIOUS ASPECT TO IT THAT MR. WADE'S DID.
24 MR. FEINBERGER'S PROSECUTION BY THE DEPARTMENT OF JUSTICE IS
25 BECAUSE HE'S CONTRIBUTING TO JOHN EDWARDS'S CAMPAIGN. THERE'S

1 NO INDICATION THAT JOHN EDWARDS WAS GOING TO GIVE HIM ANY KIND
2 OF GOVERNMENT CONTRACTS.

3 HERE YOU'VE GOT A GUY WHO GOT UP ON THE STAND HERE
4 IN SAN DIEGO AND UNDER OATH TOLD YOU THAT HE WAS PAYING PEOPLE
5 SPECIFICALLY TO GET EARMARKS. AND THE GOVERNMENT DIDN'T
6 PROSECUTE HIM, DIDN'T FEEL THAT THAT WAS -- THEY TOOK
7 \$1 MILLION. AFTER THE TRIAL WAS OVER, APPARENTLY, HE WAS
8 FINED \$1 MILLION. THAT WAS THE END OF THAT. SO YOU HAVE
9 THAT.

10 YOU'VE GOT JOEL COMBS, ALBEIT HE'S THE NEPHEW. BUT
11 JOEL COMBS, YOU KNOW, ONE OF THE THINGS THAT ALSO CAME OUT IN
12 THE TRIAL, JOEL COMBS ADMITTED THAT HE WAS KNOWN AS THE
13 BALL-DROPPER. HE ADMITTED THAT HE WAS ONE WHO CONSISTENTLY
14 WAS CHARGING THINGS TO HIS FRIENDS AND THEN TRYING TO
15 BASICALLY DEFRAUD MR. WILKES AND THE COMPANY. HE ADMITTED TO
16 THAT. AND HE'S GOT A FREE PASS. HE'S EVEN BETTER THAN MITCH
17 WADE, AND PROBABLY APPROPRIATELY SO. HE SEEMS TO BE MORE OF A
18 DUFUS. AND IF THERE'S SOME KIND OF A GRADE SCALE FOR PEOPLE
19 WHO ARE SOPHISTICATED, SURELY MITCH WADE IS A LOT MORE
20 SOPHISTICATED THAN JOEL COMBS IS.

21 WHEN YOU PUT SOMEBODY LIKE CONGRESSMAN CUNNINGHAM IN
22 THERE -- AND I KNOW THE COURT STRUGGLED WITH WHERE TO COME OUT
23 ON THAT. AND THE COURT MAYBE -- AND I DON'T WANT TO EVER
24 DELVE INTO THE KIND OF ANALYSIS OF WHAT YOUR THINKING WAS. MY
25 GUESS IS THAT IN RETROSPECT, IF YOU HAD KNOWN THEN WHAT YOU

1 KNOW NOW, YOU MIGHT HAVE COME OUT DIFFERENTLY THEN, WHICH IS
2 PROBABLY FAIR WITH MOST PEOPLE'S DECISION-MAKING PROCESSES.
3 YOU MIGHT HAVE COME OUT DIFFERENTLY AS TO HIS SENTENCE AT THE
4 TIME. I DON'T KNOW.

5 BUT THE FACT IS THAT HE DID GET A SENTENCE WHICH IS,
6 IN ESSENCE, EIGHT AND CHANGE. I THINK THAT YOU BASED THAT, IN
7 WHAT I READ, ON ALL OF THE LANDSCAPE OF CORRUPTION CASES. IF
8 THAT'S THE CASE, I DON'T KNOW HOW MR. WILKES FITS IN AT A
9 HIGHER LEVEL THAN THAT.

10 EVEN ACCEPTING -- I DON'T ACCEPT IT, BUT ACCEPTING
11 THAT YOU WILL DISAGREE AND THAT YOU THINK THAT THERE WAS TWO
12 LEVELS FOR OBSTRUCTION, SO THAT FACTORS INTO WHATEVER YOUR
13 CALCULUS IS, DOES THAT MEAN THAT HE SHOULD STILL GET MORE THAN
14 DUKE CUNNINGHAM IN THIS CASE WHILE DUKE CUNNINGHAM'S GOT ONE
15 SCAM THAT HE'S RUNNING WITH MITCH WADE AND, AT LEAST ACCORDING
16 TO THE JURY, ANOTHER SCHEME THAT HE'S RUNNING WITH MY CLIENT
17 AND THAT THE GOVERNMENT CHARACTERIZED HIM AS THE MOST CORRUPT
18 POLITICIAN IN THE HISTORY OF THE UNITED STATES?

19 THAT'S AN EIGHT-YEAR SENTENCE, AND MR. WILKES IS
20 SUPPOSED TO BEAR THE BRUNT WITH BETWEEN A 200- AND 300-MONTH
21 SENTENCE ON THIS CASE? THIS IS A GENTLEMAN WHO, WHEN THEY
22 SEARCHED HIS HOUSE, THEY'RE THE ONES -- AND IT WAS PART OF THE
23 TERABYTES OF DISCOVERY -- THEY'RE THE ONES WHO HAD THE BOXES
24 OF DOCUMENTS THAT SHOWED ALL OF HIS CHARITABLE STUFF. I THINK
25 YOU'D BE HARD-PRESSED TO FIND ONE CHARITABLE THING MITCH WADE

1 HAS EVER DONE IN HIS LIFE OTHER THAN TO ENRICH MITCH WADE.

2 THIS IS A GENTLEMAN WHO HAS, AS YOU SAW BY THE
3 LETTERS -- I DON'T THINK IF I GOT STRUCK BY A BUS TOMORROW I
4 COULD GET EVEN ONE-TENTH OF THE NUMBER OF LETTERS ASSEMBLED
5 FOR ME THAT HE HAS -- FOR SOMEBODY WHO BASICALLY HAS, FOR THE
6 LAST TWO YEARS, BEEN PUMMELED IN THE PRESS AND HAS LOST, TO BE
7 SURE, VIRTUALLY EVERYTHING THAT HE HAS, HIS REPUTATION, WHICH
8 OBVIOUSLY MEANS THE MOST TO HIM, TO HAVE HIS KIDS WHO HE HAS
9 SOLE CUSTODY OF WHO ARE SITTING HERE HAVE TO LISTEN TO THIS
10 AND HAVE TO DEAL WITH THAT. AND I HAVE KIDS THAT ARE THE SAME
11 AGE, AND I UNDERSTAND THAT THAT'S PROBABLY MORE THAN ANYTHING
12 GOT TO BE THE MOST DIFFICULT. HE'S THE SOLE PERSON WHO TAKES
13 CARE OF HIS MOTHER.

14interestingly, in a situation that I've never been
15in -- it's rare, at least by my experience -- he's got
16stepchildren. The stepchildren have been behind him
17110 percent in this case attending court and attending the
18trial and supporting him. I think that speaks volumes to the
19kind of man that he is.

20I understand the jury's verdict. I've defended
21quite a few clients in my day. I can say that no matter what
22the court does, that I've grown to like him and consider him a
23friend. I have a great deal of respect for him. I don't
24think for a minute that this court should impose anything
25close to where we've been kind of talking about this morning.

COMPUTER-AIDED TRANSCRIPTION

1 I JUST THINK THAT THAT WOULD BE A FUNDAMENTAL INJUSTICE.

2 I DON'T SEE FOR A MINUTE WHY THE GOVERNMENT CAN
3 POSSIBLY STAND UP HERE AND SEIZE THE MORAL HIGH GROUND WITH
4 MR. WILKES AND HAVE FOISTED MITCH WADE AND THAT WHOLE
5 ARRANGEMENT ONTO THE PUBLIC. I JUST THINK THAT THAT IS AN
6 INSTITUTIONAL AND PROSECUTORIAL SCHIZOPHRENIA THAT THIS COURT
7 SHOULDN'T TOLERATE AND THAT THE PUBLIC SHOULDN'T TOLERATE.

8 THE IDEA THAT SOMEBODY CAN JUST GET UP HERE AND LAY
9 CLAIM AND BASICALLY FOIST EVERYTHING THAT THEY'VE GOT AND USE
10 THIS GUY AS SOME KIND OF A REPOSITORY FOR EVERYTHING THAT THEY
11 FIND WRONG THE GOVERNMENT, WHICH IS ESSENTIALLY WHAT I THINK
12 THE TRIAL DID AND THEY CONTINUE TO DO TO THIS DAY, I THINK IS
13 JUST WRONG.

14 I KNOW THAT THE COURT WILL IMPOSE WHAT IT CONSIDERS
15 TO BE A FAIR SENTENCE. I WOULD RECOMMEND SOMETHING SOUTH OF
16 CONGRESSMAN CUNNINGHAM AS BEING A FAIR SENTENCE. AND I WOULD
17 HOPE THAT THE COURT, AFTER HEARING FROM THE GOVERNMENT, WILL
18 LET ME RESPOND. I DON'T THINK FOR A MINUTE THAT ANYTHING THAT
19 I'M GOING TO SAY TODAY IS GOING TO MATERIALLY CHANGE YOUR MIND
20 ONE WAY OR ANOTHER. YOU WERE HERE. YOU HEARD THE EVIDENCE.
21 A LOT OF THE THINGS YOU'VE SAID SO FAR IN EITHER SUSTAINING OR
22 OVERRULING THE OBJECTIONS WITH THE SAME KIND OF OBSERVATIONS
23 THAT I HAD, I THINK ANYBODY WHO IS OBJECTIVE AND LISTENED TO
24 THIS EVIDENCE KNOWS REALLY WHAT HIS ROLE WAS. AND CLEARLY,
25 HIS ROLE WAS NOT AT A LEVEL OF MITCH WADE. AND CLEARLY, HIS

1 ROLE WAS NOT LIKE CONGRESSMAN CUNNINGHAM.

2 SO I'D SUBMIT IT. AND IF YOU'D ALLOW ME TO TALK --
3 THE COURT: I WILL.

4 BEFORE YOU SIT DOWN, MR. GERAGOS, I WANT TO MAKE
5 SURE I'VE CROSSED ALL THE T'S AND DOTTED ALL THE I'S PURSUANT
6 TO RULE 32(H). I ACTUALLY CAME OUT WITH CALCULATIONS THAT
7 WERE LOWER THAN BOTH THOSE OF THE PROBATION OFFICER AND THOSE
8 OF THE UNITED STATES. BUT I WANT TO MAKE SURE THAT YOU'VE
9 HAD, IN YOUR JUDGMENT AT LEAST, A FULL OPPORTUNITY TO RESPOND
10 AND ARGUE THOSE CALCULATIONS.

11 MR. GERAGOS: I HAVE. AND WOULD SUBMIT ON THE
12 WRITTEN PAPERWORK. I THINK WE ARE, IN THE LAST SIX TO EIGHT
13 MONTHS, IN A COMPLETELY DIFFERENT UNIVERSE THAN WE WERE.

14 THE COURT: I AGREE WITH YOU. FRANKLY, I THINK THE
15 32(H) STANDARD, AT LEAST IN NOT GIVING AN ANSWER ON
16 DEPARTURES, IS BESIDE THE POINT NOW THAT DEPARTURES ARE REALLY
17 BESIDE THE POINT.

18 MR. GERAGOS: THAT'S EXACTLY MY FEELING. IT'S
19 ALMOST LIKE EXERCISING EUCLIDIAN GEOMETRY OR SOMETHING.

20 THE COURT: THANK YOU, MR. GERAGOS.

21 MR. FORGE, MR. BHANDARI, MR. HALPERN, WHO SPEAKS FOR
22 THE UNITED STATES?

23 MR. BHANDARI: IF IT'S OKAY WITH THE COURT, I'LL
24 MAKE A FEW COMMENTS, THEN MR. HALPERN WILL ADDRESS THE COURT.

25 I JUST WANT TO BRIEFLY GO OVER SOME OF THE NEW

1 MATTERS IN THE SENTENCING PAPERS. YOUR HONOR'S VERY FAMILIAR
2 WITH TRIAL RECORDS.

3 BASICALLY, WHAT THE DEFENDANT HAS ACCUSED THE
4 GOVERNMENT OF DOING HERE IS ATTACKING THE DEFENDANT FOR JUST
5 TRYING TO BE SUCCESSFUL IN GOVERNMENT CONTRACTING IN
6 WASHINGTON, D.C. THE WAY WASHINGTON, D.C. WORKS, AND IT'S
7 ENGAGING IN CLASS WARFARE PITTING RICH AGAINST POOR. NEITHER
8 OF THOSE ACCUSATIONS ARE FAIR.

9 WHAT WE'RE HERE ABOUT IS THE DEFENDANT'S METHODS,
10 THE WAY THAT HE ATTAINED THE PROFITS THAT HE EXTRACTED FROM
11 THE GOVERNMENT. THE REASON WE'RE HERE TODAY IS THAT THE
12 GOVERNMENT BELIEVES HE DID NOT PURSUE THE AMERICAN DREAM
13 FAIRLY IN THE WAY THAT WE DON'T BEGRUDGE ANYONE THE RIGHT TO
14 PURSUE, BUT RATHER HE CHEATED. HE BOUGHT HIS WAY TO THE
15 ENJOYMENT OF THOSE FINANCIAL REWARDS THAT OBVIOUSLY DROVE HIM.
16 HE DID SO ON A SCALE THAT THIS COUNTRY HAS NEVER SEEN BEFORE.

17 WE SAID THAT IN OUR PAPERS. IT'S NOT JUST THE
18 GOVERNMENT SAYING IT. IT'S NOT JUST EMPTY RHETORIC FROM THE
19 GOVERNMENT. THIS IS SOMETHING THAT IS WIDELY ACKNOWLEDGED.
20 THE PUBLIC HAS SAID THAT. AND THE WITNESSES THEMSELVES, THE
21 PEOPLE WHO SUFFERED THE BRUNT OF THE DEFENDANT'S CONDUCT,
22 THEY, TOO, SAY THAT THE CONDUCT OF THIS DEFENDANT WAS WORSE
23 THAN ANYTHING THEY'VE EVER ENCOUNTERED IN DECADES UPON DECADES
24 OF SERVICE TO THIS COUNTRY.

25 YOUR HONOR, YOU HAVE BEFORE YOU STATEMENTS FROM SOME

COMPUTER-AIDED TRANSCRIPTION

1 OF THE WITNESSES WHO TESTIFIED AT TRIAL AND SOME OTHERS WHO
2 TALK ABOUT THE EFFECT OF THE DEFENDANT'S CONDUCT ON THEM, THE
3 IMPAIRMENT OF THIS COUNTRY'S NATIONAL SECURITY AND ITS
4 RESPONSE TO THE WAR ON TERROR AS A RESULT OF THE DEFENDANT'S
5 CONDUCT.

6 MR. BEHRENS IS SOMETHING THAT WASN'T BROUGHT OUT AT
7 TRIAL. IN ADDITIONAL INFORMATION THAT WE SUBMITTED NOW, YOUR
8 HONOR NOW KNOWS THAT WHEN MR. BEHRENS WENT DOWN TO PANAMA
9 AFTER HAVING CLASHED WITH THE DEFENDANT ABOUT "WELL, YOU SAY
10 YOU'VE DONE WORK AT THIS ARMY BASE WHERE I WAS STATIONED. I
11 DIDN'T SEE YOU DO ANY WORK HERE. WHY DON'T YOU PROVE IT
12 BEFORE YOU ASK US TO PAY YOU."

13 MR. WILKES'S RESPONSE WAS ARROGANT, BULLYING,
14 THREATENING, IT WOULDN'T BE GOOD FOR HIS CAREER, HAVING
15 CUNNINGHAM CALL HIM REPEATEDLY TO HARASS HIM.

16 AND NOW YOUR HONOR KNOWS THAT WHEN MR. BEHRENS WENT
17 DOWN TO PANAMA TO CONTINUE HIS WORK ON BEHALF OF THE PEOPLE OF
18 THE UNITED STATES, WHAT DOES MR. WILKES DO? HE LEANS OVER AND
19 HE CALLS HIM AN EXPLETFIVE AND HE COOLLY INFORMS HIM THAT BAD
20 THINGS HAPPEN TO PEOPLE DOWN IN PANAMA AND WHAT IS OBVIOUSLY A
21 THREAT TO HIS PERSONAL SAFETY AND SOMETHING THAT TROUBLES
22 MR. BEHRENS TO THIS DAY.

23 MR. BEHRENS TOLD YOU -- AND I'M QUOTING FROM
24 PAGE 477 OF THE MATERIALS WE PROVIDED YOUR HONOR, HIS
25 DECLARATION -- THAT THIS WAS, QUOTE, "THE ABSOLUTE WORST

COMPUTER-AIDED TRANSCRIPTION

1 CONDUCT I'VE ENOUNTERED IN ALL OF MY YEARS WORKING WITH
2 GOVERNMENT CONTRACTORS."

3 MR. JONES, VERY SIMILAR. A SUPERIOR TO MR. BEHRENS,
4 MR. WILKES COMES IN, AND MR. JONES IS TRYING TO DO HIS JOB ON
5 BEHALF OF THE PEOPLE OF THE UNITED STATES AND MAKE SURE THAT
6 ANY PAYMENTS THAT ARE MADE TO MR. WILKES ARE AUTHORIZED AND HE
7 ACTUALLY EARNED THEM. WHAT DOES MR. WILKES DO? HE COMES IN
8 THE ROOM, THROWS THE PAPERS ACROSS THE TABLE, THEY SPILL ALL
9 OVER THE PLACE. HE DEMANDS HIS MONEY. AGAIN, THE SAME
10 TACTICS; BULLYING, THREATENING WITH CUNNINGHAM.

11 AGAIN, THE NEW REVELATION IN THE PAPERS, WHEN HE'S
12 DOWN IN PANAMA CHECKING UP ON MR. WILKES, CONTINUING TO DO HIS
13 WORK ON BEHALF OF THE UNITED STATES, HE, TOO, IS THREATENED.
14 HIS PERSONAL SAFETY IS THREATENED. NOT JUST HIM. WHAT IS
15 ABSOLUTELY GALLING AND BEYOND PALE IS SOMEBODY ACTUALLY CALLS
16 UP MR. JONES'S SCHOOL TEACHER WIFE AND SAYS, "I UNDERSTAND
17 YOUR HUSBAND IS GOING TO PANAMA. HE'D BETTER WATCH HIS BACK
18 DOWN THERE."

19 MR. JONES THEN COMES AND GIVES HIS WIFE AN ENVELOPE.
20 A PUBLIC SERVANT OF THIS COUNTRY HAD TO COME HOME, GIVE HIS
21 WIFE AN ENVELOPE, AND EXPLAIN "LOOK, IF SOMETHING HAPPENS TO
22 ME WHILE I'M GOING TO DO THE PUBLIC'S BUSINESS DOWN HERE IN
23 PANAMA INSPECTING THIS CONTRACT WITH WILKES, HERE'S WHAT YOU
24 NEED TO DO."

25 THE FACT THAT THAT CONDUCT OCCURRED SHOULD BE --

COMPUTER-AIDED TRANSCRIPTION

1 YOUR HONOR HAS COMMENTED ON HOW GALLING IT IS. NOW THAT YOU
2 KNOW THESE ADDITIONAL REVELATIONS, THE RESPONSE SHOULD BE --
3 NOW THAT WE HAVE A CHANCE TO SEND A CLEAR MESSAGE TO THOSE WHO
4 WOULD ACT IN THAT MANNER TO LOYAL PUBLIC SERVANTS WHO ARE JUST
5 TRYING TO DO THE WORK OF THE PUBLIC, THE MESSAGE THAT WE
6 SHOULD SEND IS VERY LOUD AND VERY CLEAR THAT THAT WILL BE NOT
7 TOLERATED AND PUNISHMENT WILL BE VERY SEVERE.

8 WE ACKNOWLEDGE, YOUR HONOR, THAT THE DEFENDANT HAS
9 SUBMITTED LETTERS FROM FAMILY MEMBERS, AS IS QUITE COMMON.
10 AND THE LETTERS TALK ABOUT CHARITABLE DONATIONS. WITH RESPECT
11 TO CHARITABLE DONATIONS, MR. GERAGOS TALKED ABOUT MR. WADE AND
12 SUGGESTED THAT HE WOULD BE SHOCKED TO FIND THAT MR. WADE EVER
13 GAVE A PENNY TO CHARITIES. IN FACT, MR. WADE HAD A CHARITABLE
14 FOUNDATION AND DID ENGAGE IN CHARITY.

15 IT'S GOOD THAT SOME OF THE MONEY THAT MR. WILKES
16 STOLE FROM THE GOVERNMENT -- IT'S GOOD THAT SOME OF THAT WENT
17 TO GOOD CAUSES. THAT DOESN'T ABSOLVE MR. WILKES OF THE CRIME
18 OF TAKING IT. AND THE MANNER IN WHICH HE GAVE IT WAS NOT
19 ANONYMOUSLY, BUT PROMINENTLY UNDER THE WILKES FOUNDATION. THE
20 CHARITABLE DONATIONS APPEARED TO FOCUS ON THE DEFENSE
21 INDUSTRY, WHICH DOVETAILS INTO THE DEFENDANT'S INDUSTRY. SO
22 BOTH THE FACT OF GIVING DONATIONS AND THE MANNER IN WHICH THEY
23 WERE GIVEN, MR. WILKES AND MR. WADE ARE NOT THAT DIFFERENT.

24 WITH RESPECT TO THE FAMILY, YOUR HONOR, ANY SENTENCE
25 THAT IS IMPOSED WILL HAVE AN IMPACT ON FAMILY, AND THAT'S

1 UNFORTUNATE. THAT'S TRUE IN EVERY CASE THAT COMES BEFORE YOUR
2 HONOR. AND IN EVERY SUCH CASE, THE BOTTOM LINE IS THE
3 DEFENDANT BROUGHT THAT UPON HIMSELF.

4 AND THAT'S PARTICULARLY SO IN THIS CASE WHEN THE
5 DEFENDANT WENT OUT TO HAWAII AND PROCURED SERVICES FOR HIMSELF
6 AND MR. CUNNINGHAM. HE WASN'T THINKING OF HIS FAMILY AT THE
7 TIME.

8 NOR WAS HE THINKING OF HIS FAMILY WHEN HE ENGAGED IN
9 SOME OTHER CONDUCT THAT WE'VE OUTLINED FOR YOUR HONOR THAT I
10 DON'T NEED TO GO INTO DETAIL ABOUT HERE TODAY.

11 NOR WAS HE THINKING ABOUT FAMILY VALUES WHEN HE
12 CAUSED THREATS TO BE ISSUED TO THE WIFE OF A LOYAL PUBLIC
13 SERVANT, MR. JONES.

14 WITH RESPECT ON THAT POINT, I'LL SIT DOWN, AND
15 MR. HALPERN WILL ADDRESS YOU.

16 THE COURT: THANK YOU, MR. BHANDARI.

17 MR. HALPERN.

18 MR. HALPERN: MAY IT PLEASE THE COURT, YOUR HONOR,
19 TO PUT IT BLUNTLY, BUT TO PUT IT ACCURATELY, I'M SHOCKED THAT
20 I HAD TO LISTEN TO THAT MAN GET UP IN FRONT OF THIS COURT AND
21 PLAY LIKE HE WAS ACTING IN SOME TYPE OF LEAD IN A ROMANTIC
22 SOAP OPERA, THE VICTIM. THAT HE COULD GET UP HERE TODAY AFTER
23 EVERYTHING THAT'S HAPPENED AND COME BEFORE THIS COURT AND SAY
24 HE'S THE VICTIM. THAT HE COULD COME IN FRONT OF THIS COURT,
25 WHICH REPRESENTS THE UNITED STATES, AND CONTINUE TO THIS VERY

1 MOMENT TO SAY HE'S A PATRIOT. TO BE COMPLETELY AND TOTALLY
2 UNREPENTANT FOR HIS CRIMES IS SHOCKING.

3 BUT, YOU KNOW, IT'S OFTEN BEEN SAID THAT AN
4 INDIVIDUAL'S WORDS CAN COME BACK TO HAUNT THEM. THAT'S
5 PARTICULARLY TRUE WHEN WE'RE DEALING WITH MR. WILKES. IT WAS
6 ALMOST EXACTLY A YEAR AGO TODAY WHERE HE BOLDLY PROCLAIMED
7 THAT HE WAS WAITING AND HE WAS READY AND, IN HIS WORDS, GLAD
8 THAT HE WAS GOING TO GET A JURY TRIAL. BECAUSE IN HIS WORDS,
9 "THE TRUTH" -- AND I'M QUOTING HIM -- "FINALLY WILL EMERGE."

10 WELL, IT MAY HAVE COME AS SOME SURPRISE TO HIM, BUT
11 IT DOESN'T COME AS ANY SURPRISE TO ME AND I DOUBT IT COMES AS
12 ANY SURPRISE TO ANYBODY ELSE WHO LABORS IN THIS COURT, IT
13 COMES AS NO SURPRISE TO ANYONE WHO HAS A RESPECT FOR THE LAW,
14 A RESPECT FOR HONESTY AND WHAT IT MEANS IN THIS COURT TO FIND
15 OUT THAT DESPITE THE SEEDS OF LIES AND DECEIT THAT CONTINUES
16 UP TILL TODAY, THAT THE TRUTH DID EMERGE, THAT HE GOT EXACTLY
17 WHAT HE REQUESTED.

18 HE GOT A JURY OF HIS PEERS THAT DETERMINED, BEYOND A
19 REASONABLE DOUBT, THAT HE WAS PERHAPS NOT THE ORGANIZER,
20 PERHAPS NOT THE LEADER -- I UNDERSTAND THE COURT'S CONCERNS
21 ABOUT THOSE CALCULATIONS -- BUT CLEARLY, THE ARCHITECT OF THE
22 LARGEST BRIBERY CASE IN THE HISTORY OF OUR COUNTRY. AND I
23 STAND BEFORE THE COURT TODAY TELLING YOU THAT AN UNPRECEDENTED
24 CRIME CRIES OUT FOR AN UNPRECEDENTED PUNISHMENT.

25 HERE'S THE TIME FOR IT TO STOP. I HAD TO LISTEN TO

1 A MONTH'S TRIAL OF MR. GERAGOS. I SHARE THE COURT'S
2 ADMIRATION. HE'S A VERY, VERY ADEPT ADVOCATE. FOR A MONTH,
3 HE ATTEMPTED TO DEFLECT HIS CLIENT'S GUILT UNSUCCESSFULLY.
4 AND HE COMES BEFORE THE COURT AGAIN TODAY ATTEMPTING TO TALK
5 MORE ABOUT OTHER PEOPLE THAN ABOUT HIS CLIENT; MORE ABOUT
6 MITCH WADE, MORE ABOUT JOEL COMBS, MORE ABOUT CONGRESSMAN
7 CUNNINGHAM THAN HIS OWN CLIENT.

8 I WOULD SUBMIT TO THE COURT THAT THE REASON FOR THAT
9 IS CLEAR. WHEN WE LOOK AT THE LEDGER SHEET THAT WE ALL HAVE
10 AND THE LEDGER SHEET THAT MR. WILKES BROUGHT INTO THE COURT
11 TODAY, I SUBMIT IT'S BEREFT OF ANYTHING ON HIS SIDE OF THE
12 LEDGER. HIS SO-CALLED CHARITABLE ACTS WERE FUNDED BY ILLEGAL
13 PROFITS. AND WHO WERE THE MAIN RECIPIENTS? HIS TRIBUTE TO
14 HEROES. TENS OF THOUSANDS OF DOLLARS IN TAXPAYER FUNDS TO DO
15 WHAT? TO HONOR HIS CO-CONSPIRATORS, RANDY DUKE CUNNINGHAM AND
16 DUSTY FOGGO. THAT'S THE TYPE OF CHARITY.

17 AND WE LOOK AT HIM AS A FAMILY MAN? TO THIS DAY,
18 WE'VE HAD TO LISTEN TO MR. GERAGOS CHARACTERIZE HIS NEPHEW AS
19 A BALL-DROPPER AND A BUFFOON. SOME BUFFOON, YOUR HONOR. YOU
20 SAW IN COURT ALMOST AN ENTIRE DAY HANDLING MR. GERAGOS'S
21 CROSS-EXAMINATION. IT'S CLEAR HE WASN'T SUCH A BUFFOON THAT
22 HIS TESTIMONY WAS DISCOUNTED BY THE JURY. WHAT HE WAS WAS
23 ANOTHER VICTIM OF THAT MAN'S CRIMES, THIS SUPPOSED FAMILY MAN
24 WHO USED HIS FAMILY TO PERPETRATE THESE CRIMES. IT'S AN
25 AFFRONT FOR HIM TO TRY TO SUGGEST THAT THAT FACT IS ON HIS

1 SIDE OF THE LEDGER AS OPPOSED TO THE SIDE OF THE LEDGER THAT
2 SHOWS HIS WRONGDOING.

3 THIS IS A CRIME, AS THE COURT HAS NOTED, THAT TOOK
4 PLACE NOT OVER A DAY, NOT OVER A WEEK, NOT OVER A MONTH, BUT
5 OVER ALMOST A DECADE. POINTS NOT ADDRESSED BY MR. GERAGOS.
6 THIS IS A CRIME IF NOT ORCHESTRATED, THE COURT HAS TO ADMIT,
7 SCRIPTED BY THE DEFENDANT WORD FOR WORD. I SHARE THE COURT'S
8 CONCERN WHEN IT NOTED IN CUNNINGHAM'S SENTENCE THAT IT
9 COULDN'T SQUARE THE ACTIONS OF THIS MAN, THIS PERSON WHO THE
10 COURT AND THE ENTIRE COUNTRY LOOKED UP TO AS A WAR HERO. HOW
11 COULD THIS MAN DO THESE THINGS? THE PARTS ABOUT HIS BEHAVIOR
12 THAT WERE PARTICULARLY GALLING, HOW COULD HE TREAT PEOPLE IN
13 THE GOVERNMENT IN THIS WAY? IT MADE NO SENSE.

14 AND FRANKLY, THE COURT WAS ABSOLUTELY RIGHT. IT
15 MADE NO SENSE. AND THE ONLY WAY IT'S UNDERSTANDABLE IS
16 THROUGH THE TRIAL OF THIS MAN BY HIS VERY WORDS. THE
17 GOVERNMENT INTRODUCED NOT ONE, NOT TWO, OVER HALF A DOZEN
18 EXAMPLES OF SCRIPTED CONVERSATIONS. THE ONE MR. BHANDARI
19 REFERRED TO, MR. KRATZ. WORD FOR WORD THEY WERE SCRIPTED
20 EXACTLY. AND THAT'S HOW THAT MAN, THIS MUCH MORE EDUCATED,
21 MORE VAIN, SOPHISTICATED BUSINESSMAN THAT MR. WILKES IS, TOOK
22 ADVANTAGE OF A MORE SIMPLE MIND, BUT IN HIS HEART AN
23 INDIVIDUAL WHO WAS WILLING TO BE CORRUPTED.

24 THE TREATMENT WAS NOT ONLY SCRIPTED, BUT, AS
25 MR. BHANDARI INDICATED, IT WAS CARRIED OUT BY MR. WILKES

1 DIRECTLY ON LOWER-LEVEL PEOPLE. TO THIS DAY, HE REFUSES TO
2 ACCEPT ANY RESPONSIBILITY. AS THE COURT HAS NOTED ON REPEATED
3 OCCASIONS, THIS IS NOT SIMPLE OBSTRUCTIONS OF JUSTICE, BUT
4 TIME AND AGAIN CONTINUING BEFORE THE TRIAL, DURING THE TRIAL,
5 HIS COMMENTS AFTER THE TRIAL, AND EVEN IN HIS SUBMISSIONS TO
6 THE COURT TO GET QUALIFIED COUNSEL, HE CONTINUED THE
7 OBSTRUCTION OF JUSTICE. HE CONTINUES THIS FRAUD ON THE COURT
8 AND THE FRAUD ON THE AMERICAN PEOPLE, A FAR CRY FROM MITCH
9 WADE, THE INDIVIDUAL WHO PLED GUILTY AND STILL AWAITS HIS
10 SENTENCE.

11 AND MOST SIGNIFICANTLY WAS THE LOSS TO THE
12 TAXPAYERS. AND WE CAN QUibble ABOUT HOW MUCH IT IS. AND I
13 UNDERSTAND THE COURT'S POSITION. I RESPECT THE COURT'S
14 POSITION. AT THE END OF THE DAY, IT DOESN'T MATTER. WE'RE
15 NOT ASKING FOR A GUIDELINE RANGE MORE THAN THE COURT SEE
16 ANYWAY. I WOULD SUBMIT, THOUGH, WE CAN'T RUN AWAY FROM THE
17 FACT THAT THE GOVERNMENT PAID MR. WILKES ALMOST \$100 MILLION
18 AT THE TIME OF WAR WHEN THERE ARE SCARCE RESOURCES. IT'S NOT
19 A MYSTERY TO THIS COURT THAT WE'RE RUNNING A LARGE DEFICIT
20 TODAY. IT'S NO MYSTERY THAT THERE ARE NEEDS THAT ARE BEING
21 UNMET BY THE MILITARY.

22 AND AS WE PRESENTED AT TRIAL, REGARDLESS OF HOW MUCH
23 WAS TO BE PAID OR WASN'T TO BE PAID, WHAT MR. WILKES WANTED
24 WAS NOT WHAT THE MILITARY WANTED. AND HE SUBSTITUTED THAT
25 JUGGLING. AND YOU'LL RECALL EVEN WITH THE SCANNING, THE

1 EVIDENCE INTRODUCED THE LETTERS FROM THE ARMY, FROM MR. RICH,
2 WHO WAS THE HEAD OF NGIC. THERE'S AN EXHIBIT IN EVIDENCE. IT
3 STATED THAT THE VALUE OF THE SCANNING WAS ALMOST WORTHLESS.

4 AND MORE DISTURBING TO THE GOVERNMENT, IT STATED --
5 THE LETTER'S IN EVIDENCE -- THAT TO RELY ON THAT SCANNING
6 COULD BE DANGEROUS. THE PARTICULAR EXAMPLE THAT WAS GIVEN,
7 THERE WAS A SCHOOL THAT WAS INDICATED TO BE A GOVERNMENT
8 FACILITY. SO THE TYPE OF WORK HE DID IS REALLY AT THE HEART
9 OF IT, ALSO.

10 BUT WE UNDERSTAND THE COURT'S POSITION. I'LL TALK
11 ABOUT IT FOR MAYBE TWO MORE SECONDS BEFORE I MOVE ON.

12 BUT THERE IS NO QUESTION THAT THIS MAN IS A WAR
13 PROFITEER. AND I'M NOT SAYING THIS SO MR. GERAGOS WILL COME
14 UP HERE AND SAY I'M TRYING TO INFLAME THE COURT. I'VE KNOWN
15 THE COURT LONG ENOUGH TO KNOW THERE'S NO CHANCE OF ANYTHING
16 THE GOVERNMENT SAYING INFLAMING THE COURT, THAT THIS COURT IS
17 GOING TO LOOK AT THIS THING ON THE MERITS AND MAKE THE
18 DISTINCTION.

19 THE FACT OF THE MATTER IS THESE ARE NOT THE
20 GOVERNMENT'S WORDS. HE IS THE POSTER BOY FOR WAR
21 PROFITEERING. I KNOW THE COURT GETS IT. IT UNDERSTANDS THE
22 NEW INFORMATION. IT UNDERSTANDS HOW TODAY MORE THAN ANYTHING
23 EVERYTHING THIS COURT SAYS GETS TRANSMITTED AROUND THE WORLD.
24 AND THE PUBLIC ITSELF COMES UP WITH OPINIONS. IT'S NO LONGER
25 A WORLD WHERE WE JUST HAVE A HARDCOVER ENCYCLOPEDIA

1 BRITANNICA. NOW WE HAVE ONLINE ENCYCLOPEDIAS.

2 AND IF THE COURT GOES ONLINE, OF COURSE IT WILL FIND
3 COMMENTS ABOUT THIS CASE, ABOUT THE COURT, ABOUT THE
4 GOVERNMENT. AND IF YOU WILL LOOK AT WIKIPEDIA, YOU WILL FIND
5 UNDER THE VERY DEFINITION OF "WAR PROFITEER" AN EXAMPLE GIVEN
6 ON THE INTERNET OF MR. WILKES. NOT THE GOVERNMENT'S WORDS.
7 THE PUBLIC'S WORDS. I'M QUOTING. THE DEFENDANT, QUOTE, "A
8 DEFENSE CONTRACTOR WAS ECSTATIC WHEN HEARING THAT THE UNITED
9 STATES WAS GOING TO GO TO WAR WITH IRAQ," END QUOTE, NOT
10 BECAUSE HE FELT THIS WAS A CHANCE TO LIBERATE A COUNTRY, NOT
11 BECAUSE HE THOUGHT THAT WE COULD SPREAD DEMOCRACY, BUT
12 BECAUSE, AND I QUOTE, "IT WOULD CREATE NEW OPPORTUNITY FOR HIS
13 COUNTRY," END QUOTE.

14 WHAT SENTENCE IS APPROPRIATE, YOUR HONOR, FOR A MAN
15 WHO WELCOMES THE HORROR AND DEATH IN WAR AS JUST ANOTHER
16 BUSINESS OPPORTUNITY? THAT FACT IS ALSO CLEAR TO THE PUBLIC.
17 OUR OWN PAPER, THE UNION-TRIBUNE, WHEN EXAMINING HIS CONDUCT,
18 CONCLUDED THAT THE DEFENDANT'S ACTIONS PUT OUR COUNTRY, QUOTE,
19 "AT GREATER RISK BY JUGGLING CONTRACTS MORE FOR WHAT THEY
20 WOULD DO FOR HIM THAN FOR THE MILITARY," END QUOTE.

21 THIS IS NOT THE GOVERNMENT TALKING ABOUT THE ACTIONS
22 OF THE DEFENDANT AND HIS CO-CONSPIRATORS. IT IS THE PUBLIC.
23 THESE FACTS ARE NOT LOST. IT'S NOT HYPERBOLE TO SUGGEST THAT
24 THE PUBLIC BELIEVES THAT THE CRIMES WE'RE LOOKING AT TODAY DO,
25 IN FACT, GO TO THE VERY CORNERSTONE OF OUR DEMOCRACY.

1 YOU SAW THE TRIAL. I'M NOT GOING TO GO OVER IT.
2 IT'S CLEAR. THE JURY HAS SPOKEN. WE NOW KNOW HOW THE
3 DEFENDANT'S ACTIVITIES TURNED WHAT WAS NOT A DEFENSE
4 CONTRACTOR, BUT AN INSIGNIFICANT LOBBYING FIRM INTO A MAJOR
5 DEFENSE CONTRACTOR IN A SHORT PERIOD OF TIME. AND WE KNOW NOW
6 THAT HIS FORTUNE WAS TAKEN OUT OF THE WALLETS OF THE EVERYDAY
7 TAXPAYERS. AND WHY WAS IT TAKEN OUT? WHY DID HE TAKE THESE
8 OUT? TO ENRICH HIMSELF SO HE COULD LIVE THE LIFESTYLE OF THE
9 RICH AND FAMOUS.

10 AND AS THE COURT KNOWS, ONE OF THE PROBLEMS,
11 REGARDLESS OF OVER PAYMENT OF GOVERNMENT FUNDS ON OCCASION,
12 IF, IN FACT, THE DEFENDANT PROFITED BY GETTING THE GOVERNMENT
13 TO GO INTO A CONTRACT UNJUSTLY, SOMEBODY ELSE LOSES OUT BY
14 NECESSITY. IT'S ONE OF THE TRAGEDIES IN AN EVER-INCREASING
15 HOSTILE WORLD. IF YOU RIG THE SYSTEM, YOU'RE PLAYING WITH THE
16 NATION'S SECURITY. AND DUE SOLELY -- AND THE EVIDENCE IS
17 CLEAR. SOLELY DUE TO THE INFLUENCE OF CONGRESSMAN CUNNINGHAM,
18 THE "TALKING POINTS," THE BRIBES, HE GOT IN THE NEIGHBORHOOD
19 OF \$100 MILLION THAT WOULD HAVE GONE TO PEOPLE WHO WEREN'T
20 RIGGING THE SYSTEM.

21 AS A RESULT, THERE WERE ITEMS THAT WEREN'T REQUESTED
22 BY THE PENTAGON, THAT WERE CERTAINLY OVERPRICED THAT WERE NOT
23 NEEDED AND WERE NOT PUT TO USE. I UNDERSTAND THE COURT CAN
24 LOOK AT IT A DIFFERENT WAY. I DON'T WANT TO TALK ABOUT
25 CALCULATION AND LOSS. I'M TALKING JUST ABOUT 3553. I'M

1 LOOKING AT FACTS. I'M NOT ASKING THE COURT TO CHANGE YOUR
2 GUIDELINE CALCULATIONS. BUT WE PUT IN THE RAW FACTS. AND WE
3 JUST INCLUDED A COUPLE CONTRACTS, A HANDFUL.

4 AND YOU SAW ON FIVE EQUIPMENT PURCHASES. THE
5 GOVERNMENT PAID -- IT'S IN THE PAPERS, AND WE HAVE THEM IN THE
6 EXHIBITS -- 3 MILLION AND CHANGE. IN RETURN, THE GOVERNMENT
7 PAID MR. WILKES OVER 19 MILLION. AND THE PROBLEM IS THAT THE
8 SYSTEM WASN'T FAIR. MAYBE THIS WOULD HAVE HAPPENED, MAYBE, IN
9 ANOTHER INSTANCE. BUT THE FACT IS IT HAPPENED HERE THROUGH
10 CORRUPT ACTIVITY.

11 YOU HEARD THE TESTIMONY. YOU HEARD ABOUT THESE
12 EQUIPMENT PURCHASES THAT THE GOVERNMENT DIDN'T WANT. YOU
13 HEARD WHEN WE STOOD UP HERE OVER A YEAR, ALMOST TWO YEARS AGO
14 WHEN CONGRESSMAN CUNNINGHAM WAS SENTENCED THAT THE EQUIPMENT
15 WAS LYING AROUND. IT REMAINS LYING AROUND TO THIS DAY UNUSED
16 BECAUSE IT WAS UNWANTED. THAT'S JUST THE REALITY, YOUR HONOR.

17 THE SECOND AND FINAL EXAMPLE, THE SOFTWARE
18 PURCHASES. YOU HEARD THE TESTIMONY. YOU'VE GOT THE
19 DECLARATIONS. WE PAID OVER \$10 MILLION. WHEN I SAY "WE," I'M
20 TALKING ABOUT THE COURT, THE COURT CLERKS, THE GOVERNMENT, THE
21 TAXPAYERS OF THIS COUNTRY. WE ALL PAID. AT THE TIME WHEN
22 MR. JONES SAID THIS STUFF WAS LYING AROUND UNUSED IN
23 SHRINK-WRAPPED PALLETS IN WAREHOUSES ROTTING, WE STILL BOUGHT
24 ANOTHER \$10 MILLION. WHY? BECAUSE THE PRESSURE PUT ON THE
25 GOVERNMENT BY CONGRESSMAN CUNNINGHAM THAT WAS SCRIPTED.

1 THOSE SIX PURCHASES ALONE ARE OVER \$25 MILLION THAT
2 WOULDN'T HAVE HAPPENED BUT FOR THE DEFENDANT'S ACTIVITY. AND
3 IT'S \$25 MILLION REGARDLESS OF ANY CALCULATIONS YOU WANT TO
4 MAKE. THAT'S HARD FIGURES THAT THE TAXPAYERS LOST OUT ON.

5 AND ONCE AGAIN, WE SEE HERE TODAY WHEN HE COMES
6 BEFORE THE COURT ALL OF THIS, JUST THESE HANDFUL OF
7 TRANSACTIONS, WERE DONE BY THIS PREDATORY WOLF IN HIS
8 SELF-STYLED PATRIOT'S CLOTHING. SO WHILE MR. WILKES COULD
9 LIVE THE LIFE OF THE RICH AND FAMOUS IN HIS \$2.7 MILLION
10 HOUSE, WALKING HIS TWO ACRES OF LAND, SWIMMING IN HIS SWIMMING
11 POOL, LOUNGING ON HIS 5,000-SQUARE-FOOT ESTATE, DRIVING HIS
12 HUMMER, HIS JAGUAR, HIS LAND ROVER, TAKING HIS 6,000-A-NIGHT
13 VACATIONS IN CASTLES IN SCOTLAND AND ESTATES IN HAWAII, AT THE
14 VERY SAME TIME, HE WAS SQUANDERING THE TAXPAYERS' MONEY, END
15 OF STORY, FOR PRODUCTS THEY DIDN'T ASK FOR, THE MILITARY
16 DIDN'T NEED, AND THEY DIDN'T USE.

17 NOW, BECAUSE THIS IS SO CRUCIAL TO MR. GERAGOS AND
18 HIS ARGUMENT TO THE COURT, LET ME JUST TAKE A MINUTE TO
19 EXPLAIN WHY A 100-MONTH SENTENCE THAT THE COURT IMPOSED
20 FOR CUNNINGHAM WAS APPROPRIATE AND PROPER AND WHY -- BECAUSE
21 THE COURT RECOGNIZES AND THE GOVERNMENT RECOGNIZES MUCH OF
22 WHAT YOU HAD TO DO -- AND IT'S YOUR TASK TO MAKE SURE THE
23 SENTENCES ARE COMMENSURATE BETWEEN THE VARIOUS PEOPLE WHO FACE
24 THE COURT.

25 DOES CUNNINGHAM REMAIN A CENTRAL FIGURE?

COMPUTER-AIDED TRANSCRIPTION

1 ABSOLUTELY. WAS CUNNINGHAM THE PUBLIC OFFICIAL? WAS HE THE
2 PERSON WHO BETRAYED THE PUBLIC TRUST, THE ELECTED OFFICIAL?
3 AND BECAUSE OF THAT, DOES HE BEAR AWESOME RESPONSIBILITY FOR
4 HIS ACTS? ABSOLUTELY. WE BELIEVED IT WHEN WE MADE THE
5 ARGUMENTS IN FRONT OF THE COURT SEVERAL YEARS AGO. WE BELIEVE
6 IT TODAY.

7 AND IT WAS BECAUSE OF THAT THAT WITHOUT LOOKING AT
8 LOSS IN THE VERY SAME WAY THE COURT DID TODAY AND WITHOUT
9 LOOKING AT ROLE, GIVING HIM A NEUTRAL, NOTHING ON ROLE, THE
10 GUIDELINE WAS 20 TO 25 YEARS. NOW, THE COURT -- THAT'S THE
11 GUIDELINE RANGE THAT THE COURT DETERMINED, SIMILAR TO WHAT IT
12 WAS TODAY, AT A LEVEL 38. THE COURT DIDN'T GIVE HIM THAT
13 TERM. THE GOVERNMENT DIDN'T ASK FOR THAT TERM. WHY?

14 NUMBER ONE, AS NOTED BY THE COURT, HE ACCEPTED
15 RESPONSIBILITY. CONTRAST WHAT HE DID TO WHAT THIS MAN DID. I
16 KNOW IT RESONATED WITH THE COURT. I HEARD. AS THE COURT MOST
17 LIKELY KNOWS, WE LISTEN. WE GET IT WHEN THE COURT SPEAKS. WE
18 HAVE A FEELING AS TO WHAT'S IMPORTANT. AND WHEN THE COURT
19 SAYS "HEY, MR. CUNNINGHAM, I TAKE IT. I SEE THAT YOU WENT
20 OUT. YOU WENT DOWN TO THE COURTHOUSE STEPS. AND ON THE
21 STEPS, YOU ACCEPTED RESPONSIBILITY, TEARFUL." AND THAT MEANT
22 SOMETHING TO YOU. WE GET THAT. THE GOVERNMENT GETS THAT.

23 WE CONTRAST THAT WITH WHAT YOU SAW HERE TODAY.
24 PRIOR TO INDICTMENT -- NOT AT THE TRIAL, BUT PRIOR TO
25 INDICTMENT -- CONGRESSMAN CUNNINGHAM RESIGNED THAT OFFICE.

1 THAT'S NOT INSIGNIFICANT. IT WASN'T INSIGNIFICANT TO THE
2 GOVERNMENT. I DON'T BELIEVE IT WAS INSIGNIFICANT TO THE
3 COURT. I DON'T WANT TO SAY IT WAS ON THE LEVEL OF RICHARD
4 NIXON RESIGNING TO AVOID A CONSTITUTIONAL CRISIS. IT WASN'T.
5 BUT BOY, THAT WAS SIGNIFICANT. IT MEANT SOMETHING TO US. I
6 KNOW IT MEANT SOMETHING TO THE COURT.

7 THAT MAN WHO WAS CORRUPTED BY THE DEFENDANT SAT ON
8 SOME OF THE MOST SENSITIVE COMMITTEES THAT OUR NATION HAS,
9 ENTITLED TO INFORMATION THAT VERY FEW IN THIS COUNTRY GET.
10 THE FACT THAT WE COULD HAVE HIM RESIGN AND LEAVE OFFICE BEFORE
11 BEING INDICTED, THAT MEANT SOMETHING TO US. THAT'S SOMETHING
12 THAT THE COURT HAD TO CONSIDER.

13 HE FORFEITED HIS HOUSE. WHILE MR. WILKES STILL HAS
14 HIS ESTATE, CONGRESSMAN CUNNINGHAM HAS TRADED HIS IN FOR A
15 JAIL CELL BEFORE HE HAD TO BE INDICTED. HE AGREED TO GIVE UP
16 VIRTUALLY ALL HIS EARTHLY POSSESSIONS, THOSE GAINED ILLEGALLY
17 LIKE THE ANTIQUES AND THOSE GAINED LEGALLY. HE ACCEPTED A
18 MASSIVE AND CRUSHING TAX BURDEN THAT HE SHARES WITH HIS WIFE.

19 SO NOT ONLY DID THE CONGRESSMAN ACCEPT
20 RESPONSIBILITY, BUT IN DOING SO HE ASSISTED IN THE DESTRUCTION
21 OF HIS FAMILY BECAUSE HIS WIFE BEARS THAT TAX BURDEN TO THIS
22 DAY, WHICH IS SHARED EQUALLY. MR. WILKES TRIES TO CLAIM "OH,
23 NO. THOSE ARE SEPARATE ASSETS FOR MY WIFE." CONGRESSMAN
24 CUNNINGHAM SADDLED HIS WIFE WITH THOSE NOT BECAUSE HE WANTED
25 TO, BUT BECAUSE HE ACCEPTED RESPONSIBILITY FOR WHAT HE DID,

1 SOMETHING THAT WAS IMPORTANT TO THE COURT AND TO THE
2 GOVERNMENT.

3 HE COOPERATED WITH THE GOVERNMENT INVESTIGATION, FAR
4 FROM GIVING PUBLIC PRONOUNCEMENT OR GIVING INTERVIEWS TO THE
5 NEW YORK TIMES TALKING ABOUT HE THOUGHT HANDING OUT CASH WAS
6 THE WAY HE DID BUSINESS. AGAIN, MR. GERAGOS, TALKS ABOUT WHAT
7 THE GOVERNMENT MIGHT HAVE SAID IN THE BEGINNING OF TRIAL. WHO
8 FIRST SAID TIT FOR TAT? WAS IT THE GOVERNMENT OR THE DEFENSE
9 WHO SAID, "THIS IS THE WAY BUSINESS IS DONE IN WASHINGTON"? I
10 CAN TELL YOU WILL LONG BEFORE THE TRIAL STARTED IN THE NEW
11 YORK TIMES, THE DEFENDANT SAID HOW BUSINESS WAS DONE IN
12 WASHINGTON. AND HE TALKED ABOUT GIVING CASH OUT BEFORE WE
13 EVER GOT NEAR THE COURTHOUSE STEPS.

14 AND FINALLY AND IMPORTANT, I THINK THE COURT NOTED,
15 PROBABLY MORE IMPORTANT TO THE COURT THAN TO THE GOVERNMENT,
16 THAT HE WAS, IN FACT, A WAR HERO. THAT MAKES IT ALL THE MORE
17 SAD. THAT DOESN'T RELIEVE HIM OF CULPABILITY. IT DOESN'T
18 RELIEVE HIM FROM THE CENTRAL ROLE. BUT IT IS ON HIS SIDE OF
19 THE LEDGER. WE HAVE A WAR HERO ON ONE SIDE OF THE LEDGER, AND
20 ON MR. WILKES'S SIDE WE HAVE A WAR PROFITEER. NOTHING MORE.

21 ACCEPTANCE OF RESPONSIBILITY, RESIGNING FROM OFFICE,
22 GIVING UP ALL EARTHLY POSSESSIONS, SADDLING NANCY WITH A
23 MASSIVE TAX DEBT, COOPERATING WITH THE GOVERNMENT, AND BEING A
24 WAR HERO, THIS COURT, WHICH IS AGAIN WHY IT'S EASY FROM THIS
25 PART OF THE PODIUM AND HARDER FROM YOURS -- AND I KNOW THE

1 COURT STRUGGLED WITH THIS -- IMPOSED VIRTUALLY A LIFE
2 SENTENCE.

3 THE EVIDENCE WAS UNCONTRADICTED AT TRIAL. MR. FORGE
4 ADDRESSED IT A LITTLE BIT. BUT THE LENGTH OF HIS LIFE SPAN
5 WAS ALWAYS BY TWO DOCTORS UNCONTRADICTED GOING TO BE SEVEN
6 YEARS, 84 MONTHS. HE'S GOT CANCER AND OTHER PROBLEMS THAT
7 DON'T NEED TO BE GONE INTO. THE COURT KNEW THAT AT THE TIME.
8 I THINK A LOT OF THE PUBLIC DIDN'T UNDERSTAND IT AT THE TIME,
9 THAT THAT WAS FACTORED INTO WHAT THE COURT WAS DOING AND THE
10 GRAVITY OF THE SENTENCE IT IMPOSED. DESPITE ALL THE FACTS ON
11 HIS SIDE OF THE LEDGER, THE COURT STILL FELT IT WAS
12 APPROPRIATE TO GIVE THE CONGRESSMAN A 100-MONTH SENTENCE FOR A
13 MAN WITH A LIFE EXPECTANCY OF 84 MONTHS.

14 NOW, BY THIS MATRIX, THE SENTENCE SHOULD BE WELL
15 OVER 300 MONTHS FOR THIS DEFENDANT, WHICH THE GOVERNMENT IS
16 NOT ASKING FOR. ALL WE'RE ASKING FOR IS A SENTENCE CONSISTENT
17 WITH THE GUIDELINES AS THE COURT HAS FOUND THEM. WE'RE NOT IN
18 THE BUSINESS OF THROWING OUT THE GUIDELINES. I COME IN HERE
19 EVERY DAY. I KNOW THIS COURT HAS RESPECT FOR THE GUIDELINES.
20 I KNOW THE FACT THAT THEY'RE NOT MANDATORY. THEY ARE A FACTOR
21 TO BE CONSIDERED.

22 AND THE ONLY REASON I MENTION IT IS BECAUSE THEY DO
23 INFORM. IT'S INTERESTING WHEN THE GUIDELINES AND THE 3553(A)
24 FACTORS BASICALLY COME OUT IN THE SAME NEIGHBORHOOD. THAT'S
25 WHY THE GOVERNMENT, AS THE COURT HAS NOTED -- WHILE WE MAY

1 DISAGREE WITH THE CALCULATIONS, THAT'S ALL THEY ARE. I DON'T
2 THINK THERE'S A DISAGREEMENT WITH THE SEVERITY OF THE CRIME
3 AND THE ROLE AND DEFENDANT PLAYED.

4 SO WE LOOK AGAIN AT THE VARIOUS SIDES OF THE LEDGER.
5 AND WE DON'T SEE SOMEBODY HERE WHO IS WET, WHO IS COLD, WHO IS
6 HUNGRY, IN THE COURT'S WORDS. WE SEE SOMEBODY WHOSE MOTIVES
7 WERE SIMPLY SHABBY, SORDID, AND SQUALID. HE DID THIS NOT
8 BECAUSE OF ANY DESIRE WHATSOEVER SO HELP THE MILITARY. THAT'S
9 RUBBISH. HE DID IT SO HE COULD LIVE HIGHER ON THE HOG.

10 AND IF ANYTHING, HIS APPETITE FAR EXCEEDED ANYTHING
11 OF THE CONGRESSMAN. \$100 CIGARS. \$1,000 BOTTLES OF WINE.
12 TENS OF THOUSANDS OF DOLLARS ON VACATION. HUNDREDS OF
13 THOUSANDS OF DOLLARS ON CORPORATE JETS AND CARS. MILLIONS OF
14 DOLLARS IN BUILDINGS. AND WHY NOT? WHY NOT? IT WAS ALL
15 FINANCED BY THE UNITED STATES TAXPAYERS.

16 WILKES'S IDEA OF AN AMERICAN DREAM IS SIMPLY A
17 NIGHTMARE FOR THE AMERICAN PUBLIC AND THE AMERICAN TAXPAYER.
18 THERE'S NO BETTER WINDOW ON THIS SUPPOSED FAMILY MAN, YOUR
19 HONOR. YOU HEARD IT AT TRIAL, THE MAN WHO COMES IN HERE AND
20 ASKS FOR FORGIVENESS. HE DOESN'T ADMIT ANYTHING, BUT SAYS
21 HE'S A GOOD FAMILY MAN.

22 WHAT HAPPENED WHEN HIS FINANCIAL EMPIRE STARTED TO
23 COLLAPSE? YOU HEARD IT FROM THAT WITNESS STAND. A MAN WHO IS
24 SOPHISTICATED, MUCH MORE SOPHISTICATED IN FINANCIAL MATTERS
25 THAN I AM, HE ADMITTED WHAT HE DID TO PROFIT UP, HE TOOK MONEY

1 OUT OF HIS KIDS' COLLEGE FUNDS.

2 AND THE REASON I MENTIONED THAT IS HE HAD TO ADMIT
3 IT AT THE SAME TIME HE WAS MAINTAINING A LUXURY BOX AT THE
4 PADRES. HE WAS PAYING OVER \$200,000 A YEAR AT THE SAME TIME
5 HE DRAINED HIS KIDS' COLLEGE FUNDS. THAT'S THE FAMILY MAN?
6 YOU MAY RECALL THE LITTLE BACK-AND-FORTH WE HAD ON THIS POINT.
7 HE SAID, "IT'S MY MONEY. I PUT IT IN THERE. I'M A
8 BUSINESSMAN. I'M ENTITLED TO KNOW HOW MONEY CAN GO IN AND
9 OUT."

10 WELL, WE NOW KNOW IT GOES OUT WHEN THE PADRES BOX
11 COMES IN. IT ONLY GOES BACK IN, IF AT ALL, WHEN THE
12 GOVERNMENT IS ABOUT TO SEIZE IT OR WHEN THE COURT MIGHT WANT
13 TO FORFEIT THESE ILL-GOTTEN GAINS, THE STOLEN TAXPAYER FUNDS.
14 THAT'S THE ONLY TIME IT GOES BACK IN. AT THE SAME TIME, THE
15 GOVERNMENT IS PAYING FOR HIS COURT-APPOINTED LAWYERS WHO ARE
16 IN THE COURT TODAY. "MAYBE THERE I'LL PUT SOME MONEY BACK IN
17 THE COLLEGE FUNDS BECAUSE I'M A FAMILY MAN."

18 IN CONCLUSION, THIS IS THE YARDSTICK. EVERYBODY
19 LOOKS TO THIS COURT. IT'S YOUR DETERMINATION WHAT TO DO. AND
20 THE REASON IT'S IMPORTANT IS BECAUSE THIS IS EITHER GOING TO
21 CONFIRM OR DISCREDIT THE CRITICS, THE BLOGGERS, THE PUBLIC WHO
22 BELIEVE THAT THIS COURT OR ANY COURT GIVES FAVORABLE TREATMENT
23 TO A WHITE COLLAR CRIMINAL OVER THE FAR LESS FORTUNATE PEOPLE
24 THAT COME BEFORE THIS COURT EVERY DAY.

25 IT'S NOT EASY TO GIVE PEOPLE SENTENCES FOR A ONE-DAY

1 CRIME FOR ECONOMIC REASONS. THEY GET CAUGHT WITH 50, 60,
2 70 POUNDS OF COCAINE. THE COURT'S HANDS ARE TIED. I'VE SEEN
3 THE COURT TIME AND AGAIN STRUGGLE WITH THE FACT THAT THAT TYPE
4 OF CRIME WARRANTED A SERIOUS SENTENCE. AND I WOULD BESEECH
5 THE COURT THAT IT'S IMPORTANT FOR EVERY SINGLE ONE OF THOSE
6 LESS FORTUNATE PEOPLE THAT COME IN HERE THAT WE SEE THAT SAME
7 YARDSTICK OF JUSTICE.

8 AND THE GOVERNMENT BELIEVES IT'S NOT ADEQUATE, IT'S
9 NOT ADEQUATE DETERRENCE FOR SOMEBODY WHO RIGGED THE SYSTEM,
10 WHO OBSTRUCTED JUSTICE, WHO ROBBED THE PUBLIC TREASURY, WHO
11 BULLIED GOVERNMENT OFFICIALS, WHO OBSTRUCTED JUSTICE AND IS
12 UNREPENTANT TO GET A SENTENCE THAT IS EVEN CLOSE TO THE DECADE
13 THAT HE COMMITTED HIS ILLEGAL ACTS AND ENJOYED THEIR FRUITS.

14 IT'S FOR THAT REASON THAT WE SUGGEST THAT THIS COURT
15 GIVE A SIGNIFICANTLY HIGHER SENTENCE THAN ONE THAT IT WOULD
16 GIVE TO A CO-CONSPIRATOR WHO PLED GUILTY, COOPERATED, TRADED
17 HIS CONGRESSIONAL OFFICE FOR A JAIL CELL, AND FORFEITED ALL
18 HIS EARTHLY POSSESSIONS.

19 ABOUT 150 YEARS AGO -- AND THIS, YOUR HONOR, MAY
20 SEEM LIKE HYPERBOLE, BUT IT STRIKES TO THE GOVERNMENT HERE --
21 IN ANOTHER TIME OF WAR, ANOTHER PRESIDENT, ABRAHAM LINCOLN,
22 SAID AND URGED THE NECESSITY OF MAKING SURE THAT WE WOULD HAVE
23 GOVERNMENT OF THE PEOPLE, BY THE PEOPLE, FOR THE PEOPLE.
24 BECAUSE, IN HIS WORDS, IF NOT, WE WOULD END UP PERISHING FROM
25 THE EARTH.

COMPUTER-AIDED TRANSCRIPTION

1 BRENT WILKES'S CRIMES GO THE HEART OF THIS LEGACY.
2 THERE'S NO SHORTCUT HERE. THIS IS A CRIME AGAINST OUR SYSTEM
3 OF JUSTICE. WE WOULD ASK THAT THE COURT IMPOSE AN APPROPRIATE
4 SENTENCE.

5 THE COURT: THANK YOU, MR. HALPERN.

6 MR. GERAGOS: WOULD THE COURT ALLOW ME TO RESPOND?

7 THE COURT: YES, MR. GERAGOS.

8 MR. HALPERN: DO I GET A SURREBUTTAL?

9 THE COURT: THE DEFENDANT IS GOING TO GET SENTENCED
10 TODAY. I'LL GIVE MR. GERAGOS THE LAST WORD.

11 MR. GERAGOS: I SAT HERE AND LISTENED TO THIS. I
12 DON'T KNOW WHAT YOU -- HOW YOU WANT TO CHARACTERIZE IT. MY
13 BELIEF WAS WHEN WE TRIED THIS CASE, WE TRIED ON WHAT HAPPENED
14 IN THE COURTROOM. WE WERE NOT TRYING THIS CASE BECAUSE OF
15 MR. HALPERN'S PREOCCUPATION FOR GOING ONLINE OR ON THE
16 INTERNET OR WIKIPEDIA OR WORRIED ABOUT BLOGGERS OR ANYTHING
17 ELSE. WE'VE REALLY REACHED A PITIFUL POSITION WHEN YOU HAVE
18 REPRESENTATIVES OF THE GOVERNMENT GETTING UP HERE AND SAYING,
19 "WE'VE GOT TO WORRY ABOUT WHAT THE BLOGGERS MIGHT SAY. WE'VE
20 GOT TO WORRY ABOUT SOME ANONYMOUS PERSON POSTED SOMETHING ON
21 WIKIPEDIA." FOR ALL I KNOW, YOU CHECK THE IP ADDRESS AND IT
22 CAME FROM THE SAN DIEGO U.S. ATTORNEY'S OFFICE. I DON'T HAVE
23 ANY IDEA WHO POSTED IT. BUT THE FACT IS IF WE WANT TO GO TO
24 WIKIPEDIA, WHEN I GET HOME, I'LL GO TO MY IP ADDRESS.
25 I'LL POST IN THE TERM "GRANDSTANDING," AND I'LL PUT IN THE

COMPUTER-AIDED TRANSCRIPTION

1 SAN DIEGO U.S. ATTORNEY'S OFFICE.

2 THIS CASE WAS TRIED IN THIS COURT. THE COURT, I
3 THINK, PAID ATTENTION. THE COURT WENT THROUGH THIS MORNING
4 THE OBJECTIONS THAT WE HAD, SUSTAINED SOME AND OVERRULED SOME,
5 WAS NOT DELUSIONAL ABOUT WHAT TRANSPRIRED. THE IDEA OF
6 INVOKING THE CIVIL WAR AND THE IRAQ WAR AND EVERY OTHER THING
7 WE CAN COME UP WITH TO PUT ON HIS BACK IS MORE THAN JUST A
8 LITTLE BIT LUDICROUS.

9 THIS IS A CASE IN ITS CONTEXT WHERE YOU'VE GOT MITCH
10 WADE WITH VIRTUALLY NO TIME. YOU'VE GOT JOEL COMBS AND A FREE
11 PASS. YOU'VE GOT DUKE CUNNINGHAM AT EIGHT YEARS. I DID NOT
12 KNOW THAT I HAD TO DEFEND JOHN WILKES-BOOTH IN ADDITION TO IT.
13 I TAKE GREAT EXCEPTION TO IT. THIS CASE IS SOMEWHERE, IN MY
14 VIEW, BETWEEN ZERO AND EIGHT. I THINK THAT'S THE UNIVERSE.
15 OBVIOUSLY, I THINK IT'S CLOSER TO ZERO THAN THE EIGHT. BUT AS
16 MR. HALPERN SAID, AS IF IT MAKES ANY DIFFERENCE, WE LEAVE IT
17 TO THE COURT.

18 I WOULD ASK THE COURT TO IMPOSE A SENTENCE. AND I
19 DO TAKE A LITTLE AFFRONT TO THE IDEA THAT I'VE TALKED ABOUT
20 AND DEFLECTED EVERYTHING AWAY FROM MR. WILKES. WE HAVEN'T RUN
21 AWAY FROM MR. WILKES AT ALL EITHER IN THE FILINGS OR DURING
22 THE TRIAL. WE PUT HIM ON. THERE SEEMS TO BE A DEGREE OF
23 ANIMUS BETWEEN MR. HALPERN. AND THAT MAY BE AS A RESULT OF
24 HIS CROSS-EXAMINATION OF MR. WILKES. I DON'T KNOW. MAYBE
25 SOME THERAPY LATER CAN DEAL WITH THAT.

1 BUT THE FACT REMAINS THAT MR. WILKES HAS SPENT
2 50-SOME-ODD YEARS WITHOUT SO MUCH AS A BLEMISH ON HIS RECORD.
3 HE'S RAISED A FAMILY, A DEVOTED FAMILY. FAR BE IT FOR
4 MR. HALPERN OR ANYBODY ELSE TO CAST ASPERSIONS ON WHAT I THINK
5 IS A PRETTY EXEMPLARY BACKGROUND PAST AND HOPEFULLY FUTURE.

6 AND I SUBMIT IT ON THAT.

7 THE COURT: THANK YOU, MR. GERAGOS.

8 THE COURT HAS CALCULATED THE SENTENCING GUIDELINES
9 SINCE THE BOOKER CASE. THE GUIDELINES ARE A FACTOR, AN
10 IMPORTANT FACTOR. I HAVE CONSIDERED THEM. AND I'VE
11 CONSIDERED THE RANGE THAT I CONCLUDED FITS WHAT HAS BEEN
12 PROVED HERE, 235 TO 293 MONTHS.

13 IN THE PERIOD SINCE BOOKER WAS DECIDED, THE COURT IS
14 ALSO TO LOOK AT STATUTORY FACTORS THAT ARE SET FORTH UNDER
15 3553(A). AND I THINK, MR. GERAGOS, THIS IS WHAT YOU AND, TO
16 SOME EXTENT, MR. HALPERN AND MR. BHANDARI HAD IN MIND. YOU
17 REMINISCED BACK TO A TIME WHEN WE DIDN'T HAVE GUIDELINES AND
18 THAT COMMON SENSE FACTORS THAT HAVE MEANING TO EVERYDAY PEOPLE
19 WERE TAKEN INTO CONSIDERATION. I THINK 3553 GIVES US THAT
20 LATITUDE.

21 BY SAYING THAT, I'M NOT A DISPARAGER OF THE
22 GUIDELINES. ORDINARILY, I FIND MYSELF, AT LEAST TENTATIVELY
23 BEFORE I HEAR ARGUMENT ON CASES, IN AGREEMENT WITH THE RANGE
24 THAT'S PRODUCED BY APPLICATION OF THE GUIDELINES. THE FIRST
25 OF THOSE FACTORS THAT I'M TO LOOK AT IS THE NATURE AND

COMPUTER-AIDED TRANSCRIPTION

1 CIRCUMSTANCES AND THE SERIOUSNESS OF THE OFFENSE. THAT HAS
2 BEEN ALLUDED TO BY BOTH SIDES IN THIS CASE. I FIND THAT THAT
3 IS AN AGGRAVATING FACTOR HERE.

4 THIS WAS A LONG AND CONTINUOUS CRIME. IT WAS A
5 PREMEDITATED CRIME. THE EVIDENCE AT TRIAL SHOWED THAT THE
6 TIME PERIOD THAT MR. CUNNINGHAM WAS BRIBED AND REALLY WAS AT
7 THE BECK AND CALL OF MR. WILKES AND MR. WADE AND POSSIBLY EVEN
8 OTHERS SPANNED NINE YEARS. IT WAS BROAD IN SCOPE AS WELL.

9 ONE OF THE INTERESTING THINGS ABOUT THIS CASE IS
10 THAT HERE'S A FELLOW WHO'S A CERTIFIED PUBLIC ACCOUNTANT.
11 HE'S GOT A DEGREE IN ACCOUNTING. YET WHEN HE GETS INTO THE
12 GOVERNMENT CONTRACT AREA, HE'S SORT OF A GENERALIST. HE GOES
13 WHEREVER THE CONTRACTS ARE. "IF IT MEANS SCANNING DOCUMENTS,
14 I CAN DO THAT. IF IT MEANS SOFTWARE PROGRAMS, I CAN DO THAT."

15 IT'S AGGRAVATING IN THIS CONTEXT: I AGREE GENERALLY
16 WITH THE ARGUMENT THE GOVERNMENT HAS MADE THAT BUT FOR
17 MR. WILKES'S RELATIONSHIP WITH CONGRESSMAN CUNNINGHAM, A LOT
18 OF THESE CONTRACTS NEVER WOULD HAVE BEEN ACTED UPON BY THE
19 UNITED STATES. I THINK A LOT OF THIS STUFF WAS STUFF THAT THE
20 GOVERNMENT REALLY DIDN'T NEED, THAT THE PEOPLE THAT WERE IN
21 THE KNOW SAID WE DIDN'T NEED. AND PROBABLY THEY SHOULD HAVE
22 BEEN LISTENED TO. GREATER DEFERENCE SHOULD HAVE BEEN GIVEN TO
23 THEM. BUT IT WAS BECAUSE OF THAT ILLICIT RELATIONSHIP BETWEEN
24 MR. WILKES AND CONGRESSMAN CUNNINGHAM THAT CONTRACTS WERE
25 EFFECTED AND ENTERED INTO AND THE GOVERNMENT ENDED UP WITH

COMPUTER-AIDED TRANSCRIPTION

1 SUCH THINGS AS A ROOMFUL OF COMPUTERS SITTING AROUND WITH NO
2 ONE TO USE THEM. THAT GOES TO THE CIRCUMSTANCES OF THIS
3 OFFENSE.

4 I MENTIONED EARLIER THAT I COULDN'T FIND BY CLEAR
5 AND CONVINCING EVIDENCE THAT MR. WILKES WAS AN ORGANIZER OR
6 LEADER. BUT THERE WAS AN ASPECT TO THIS THAT IS TROUBLESOME
7 TO ME. AND IT SHOWS, I THINK, HOW SHREWD AND EXPLOITIVE
8 MR. WILKES WAS. IT HAS BECOME ABUNDANTLY CLEAR TO ME IN
9 HANDLING THESE TWO CASES THAT CONGRESSMAN CUNNINGHAM, AT LEAST
10 AT THE TIME OF THESE OFFENSES, HAD AN OVERBLOWN EGO. HE WAS A
11 GUY THAT YOU KNEELED TO AND LIKE TO GET FLUFFED. AND
12 MR. WILKES SAW THAT. HE SAW THAT CHARACTERISTIC. HE KNOWS
13 HUMAN NATURE. HE'S ADEPT AT FIGURING THINGS OUT LIKE THAT
14 OUT.

15 AND MUCH OF HIS ACTIVITY HERE DESIGNED TOWARD
16 ULTIMATELY HIS OWN ENDS AND HIS OWN PROFIT INVOLVED EXPLOITING
17 THAT FOIBLE ON CONGRESSMAN CUNNINGHAM'S PART. THERE WAS AN
18 ALLUSION BY MR. BHANDARI TO THE POKER GAME TESTIMONY.
19 MR. WILKES TOOK SUBORDINATES OUT AND SAID, "LET DUKE WIN."
20 THEN THERE WAS THE POKER GAME UP IN IDAHO WHERE APPARENTLY
21 SOMEBODY HAD THREE OF A KIND AND DUKE HAD TWO PAIR AND THAT
22 PERSON WON AND MR. WILKES TOOK HIM OUT AND SCOLDED HIM
23 AFTERWARDS AND SAID, "I SAID LET DUKE WIN."

24 THEN I'M REMINDED OF THE SCUBA-DIVING ADVENTURE
25 WHERE MR. WILKES WAS ASTUTE ENOUGH TO HAVE A ROCK PLANTED

1 SOMEWHERE ON THE BOTTOM OF THE OCEAN WITH DUKE'S NAME ON IT
2 AND THEN THE FEIGNED DELIGHT WHEN THE ROCK WAS SHOWN TO THE
3 VIDEOGRAPHER AND EVERYBODY WAS POINTING.

4 THAT'S A PRETTY SHREWD FELLOW, MR. GERAGOS. THAT'S
5 THE CHARACTER OF MR. WILKES. THOSE TWO INCIDENTS, INNOCUOUS
6 AS THEY ARE, THEY SORT OF COLOR MY VIEW ON WHAT HE DID IN THIS
7 CASE AND HOW HE MANIPULATED THE FOIBLES OF ANOTHER INDIVIDUAL
8 WHO WAS RIPE FOR MANIPULATION. BUT HE TOOK ADVANTAGE OF THAT.
9 THERE WAS A LEVEL OF SOPHISTICATION AND SHREWDNESS TO THAT
10 THAT I THINK INFORMS THE JUDGMENT ABOUT WHAT HE DID IN THIS
11 CASE AND HOW HE KNEW WHAT HE WAS DOING.

12 I DON'T ACCEPT FOR A SECOND, FOR EXAMPLE, THE
13 TESTIMONY THAT HE WOULD TAKE INVESTMENT ADVICE TO THE TUNE OF
14 A HALF A MILLION DOLLARS FROM DUKE CUNNINGHAM. THIS IS THE
15 FELLOW THAT HE SCRIPTED THE STATEMENT "I, DUKE," IN
16 PARENTHESES. THIS IS A FELLOW WHOSE INTELLIGENCE AND
17 INTELLECT MR. WILKES DIDN'T PARTICULARLY RESPECT, BUT IT
18 HAPPENED THAT HE HAD THE COMMISSION TO GET THESE THINGS DONE.
19 SO HE HAD TO USE HIM.

20 THAT'S PART OF THE CASE THAT I LOOK AT AND I
21 CONSIDER AGAINST THE BACKDROP OF THE THINGS THAT HAPPENED
22 HERE. THAT'S COMMON SENSE THINGS THAT EVERYDAY PEOPLE WHO
23 KNOW HUMAN NATURE UNDERSTAND.

24 PART OF THE SERIOUSNESS OF THIS OFFENSE AND ONE OF
25 THE CIRCUMSTANCES IS I DO FIND THAT FUNDS WERE DIVERTED FROM

1 OTHER WORTHY PROJECTS. I'M NOT GOING TO EMBRACE THIS
2 CHARACTERIZATION OF WAR PROFITEER. THAT MAY HAVE BEEN THE
3 EFFECT ON THE GOVERNMENT'S VIEW OF WHAT HAPPENED. MR. WILKES
4 WAS A GUY THAT WAS GOING TO GET CONTRACTS WHEREVER HE COULD,
5 AND HE WAS GOING TO USE MR. CUNNINGHAM TO MANIPULATE THAT
6 PROCESS.

7 I USED THE TERM IN SENTENCING MR. CUNNINGHAM
8 "BID-RIGGING." WAS THAT REALLY WHAT WAS GOING ON HERE. THESE
9 PEOPLE APPLYING FOR GOVERNMENT CONTRACTS THOUGHT THERE WAS A
10 LEVEL PLAYING FIELD, AND THEY WERE VERY NAIVE. THERE WASN'T.
11 THEY NEVER HAD A CHANCE. CUNNINGHAM WAS CARRYING THE WATER
12 FOR MR. WILKES AND MR. WADE AND BEING PAYING HANDSOMELY FOR
13 THAT.

14 THEN, OF COURSE, THERE'S THE EFFECT OF WHAT HAPPENED
15 HERE. WE HAD A PUBLIC OFFICIAL, AN ELECTED OFFICIAL, FROM
16 THIS AREA OF THE COUNTRY WHO WAS CORRUPTED. HE ADMITS HE WAS
17 CORRUPTED AND HAS BEEN SHOWN TO HAVE BEEN CORRUPTED. THE
18 EVIDENCE IN THIS CASE HAS SHOWN THAT MR. WILKES WAS ONE OF
19 THOSE WHO DID THE CORRUPTING. AND THAT IS TROUBLING TO ME.

20 WE'RE IN AN ELECTION YEAR NOW. ALREADY THE CANNONS
21 HAVE COME OUT ON BOTH SIDES. WE'RE VERY CYNICAL ABOUT
22 POLITICIANS GENERALLY ANYMORE. AND WHAT HAS HAPPENED HERE AND
23 WHAT MR. WILKES WAS A PARTY TO WAS ADDING TO THAT CYNICISM
24 TOWARD OUR SYSTEM OF GOVERNMENT AND ELECTED OFFICIALS.

25 I HOPE THERE ARE STILL ELECTED OFFICIALS WHO EVERY

COMPUTER-AIDED TRANSCRIPTION

1 DAY STRIVE TO DO THEIR BEST FOR THEIR CONSTITUENCIES AND FOR
2 THE UNITED STATES. I THINK THAT'S TRUE. I THINK THIS IS THE
3 EXCEPTION IN THIS CASE. BUT YOU KNOW THERE ARE A LOT OF
4 PEOPLE THAT DON'T BELIEVE THAT. THEY DON'T EMBRACE THAT VIEW.
5 THEY'RE VERY CYNICAL ABOUT THAT. AND UNFORTUNATELY, A
6 SITUATION LIKE THIS JUST GIVES THEM A LOUDER VOICE AND ADDS TO
7 THE CYNICISM THAT THEY HAVE ABOUT OUR WHOLE POLITICAL PROCESS.
8 AND THAT'S BAD FOR YOU AND BAD FOR ME AND BAD FOR EVERYBODY
9 HERE. IF WE DON'T HAVE SOME CONFIDENCE IN ELECTED OFFICIALS
10 TO RESPONSIBLY HANDLE OUR PROBLEMS, THEN WE'RE IN DEEP
11 TROUBLE.

12 MR. WILKES, I SAY TO YOU THAT YOU HAVE DAMAGED THE
13 COUNTRY IN THAT RESPECT. THINGS THAT YOU'VE DONE HAVE HAD
14 THAT EFFECT.

15 I'M TO LOOK, ALSO, AT THE HISTORY AND
16 CHARACTERISTICS OF THE DEFENDANT. I HAVE CONSIDERED THAT VERY
17 CAREFULLY. I'VE READ THE LETTERS TWICE. THERE WERE MANY,
18 MANY LETTERS OF SUPPORT FOR MR. WILKES. THE GOVERNMENT TAKES
19 THE POSITION THAT THIS IS BLACK AND WHITE. HE'S MR. HYDE
20 ALONE. I DON'T SEE IT THAT WAY. THE LETTERS BE SPEAK OF A
21 FELLOW WHO'S A GOOD FATHER. THEY TALK ABOUT SOMEONE WHO
22 ADOPTED HIS STEPCHILDREN AND RAISED THEM AS HIS OWN. HE CARED
23 FOR THEIR NEEDS, FINANCIAL AND OTHERWISE.

24 PARTICULARLY COMPELLING WAS A LETTER I GOT FROM
25 MR. WILKES'S DAUGHTER. AND I READ THAT CAREFULLY. I HAVE

1 CHILDREN, MR. WILKES, ABOUT THE SAME AGE. AND IT IS IMPORTANT
2 TO ME, AS I KNOW IT IS TO YOU, TO BE RESPECTED BY YOUR KIDS.
3 YOU LET THEM DOWN IN THIS CASE. YOUR DAUGHTER, IN HER LETTER
4 TO ME, SPEAKS ABOUT HOW IT'S UNLIKELY THAT YOU'LL BE THERE
5 WHEN SHE GRADUATES COLLEGE. IT'S UNLIKELY THAT YOU'LL BE
6 THERE WHEN SHE GETS MARRIED. THAT'S A VERY TOUCHING ACCOUNT
7 FROM HER. AND I THOUGHT ABOUT THAT.

8 I'M SYMPATHETIC TO THE EFFECT THAT SENTENCING YOU TO
9 A TERM OF JAIL IS GOING TO HAVE ON YOUR FAMILY, YOUR MOTHER.
10 YOU HAVE BROTHERS AND AUNTS AND UNCLES THAT FLEW IN WHO TALKED
11 ABOUT HOW MR. WILKES WAS THERE IN THE TIME OF FINANCIAL AND
12 OTHER NEED. YOU SENT CHECKS FOR \$5- OR \$10,000 WHEN THERE WAS
13 A LACK OF HEALTH INSURANCE. I THINK THOSE THINGS ARE ALL ON
14 THE POSITIVE SIDE OF THE LEDGER FOR YOU, MR. WILKES.

15 BUT HERE'S WHERE I'M TROUBLED: YOU MAINTAINED TODAY
16 IN YOUR STATEMENT TO ME, WHICH I LISTENED TO CAREFULLY, THAT
17 YOU'RE NOT GUILTY, THAT YOU WERE ACTING WITH PURE MOTIVES AND
18 CLEANLY. AND I THINK ABOUT THAT AND THE EFFECT IT MUST HAVE
19 ON YOUR FAMILY. I THINK IF YOU WERE TO DO THE RIGHT THING
20 ABOUT THIS, TODAY IS THE RIGHT TIME TO OWN UP. YOU'RE GOING
21 TO GO OFF TO JAIL, AND YOUR FAMILY IS GOING TO BE CRUSHED BY
22 THAT BECAUSE THEY BELIEVE YOU. THEY BELIEVE THAT THERE WAS
23 NOTHING TO THIS, THAT THIS WAS ALL A MANIPULATION OF
24 COINCIDENTAL FACTS BY THE UNITED STATES AND AN INNOCENT PERSON
25 IS GOING TO JAIL.

1 THE JURY KNEW THAT THAT WASN'T TRUE, AND I KNOW
2 THAT'S NOT TRUE, AND YOU KNOW THAT'S NOT TRUE. A GUY THAT
3 CARES ABOUT HIS FAMILY IS AT LEAST GOING TO COME CLEAN TO
4 THEM. SO WHILE IT MAY NOT BE ENTIRELY COMFORTING TO THEM, AT
5 LEAST THEY'LL HAVE SOME PEACE OF MIND THAT THIS IS ABOUT
6 SIMPLE ACCOUNTABILITY, THAT YOU'RE IN JAIL BECAUSE YOU DID
7 SOMETHING THAT VIOLATED THE LAW. YOU HAVEN'T GIVEN THEM THAT
8 LEVEL OF COMFORT. YOU JUST HAVEN'T. SO I TAKE THAT INTO
9 CONSIDERATION AS WELL.

10 I'M TOLD THAT I'M TO LOOK TO PROMOTE RESPECT FOR THE
11 LAW. THAT'S ONE OF THE FACTORS. I THINK I'VE SPOKEN TO THAT.
12 IT'S SERIOUS BUSINESS WHEN OUR ELECTED OFFICIALS ARE CORRUPTED
13 AND THE ORDINARY PROCESS OF THE GOVERNMENT IS TURNED ON ITS
14 HEAD. THAT'S WHAT HAPPENED IN THIS CASE.

15 I'M TOLD I'M TO LOOK TO DETERRENCE. HERE I THINK
16 THERE IS A NEED FOR SOME SPECIFIC DETERRENCE. THERE'S A
17 DISCONNECT, MR. GERAGOS AND MR. WILKES, IN THE ATTITUDE OF
18 MR. WILKES. I DON'T HAVE ANY STRONG FEELING, GOOD FEELING
19 TODAY THAT HE GETS IT, THAT HE UNDERSTANDS THAT HE'S DONE
20 WRONG AND THAT THERE'S A TIME TO ATONE FOR THAT AND A PLEDGE
21 THAT "I WOULDN'T DO THIS KIND OF THING AGAIN." IF ANYTHING,
22 HE'S COMPOUNDED THE PROBLEMS FOR HIMSELF BY NOT TELLING THE
23 TRUTH ON THE STAND.

24 THE GOVERNMENT'S ALLUDED TO THE FINANCIAL
25 DECLARATION THAT WAS FILED WITH ME. THAT'S TROUBLING TO ME.

COMPUTER-AIDED TRANSCRIPTION

1 I'M NOT GOING TO TAKE IT INTO ACCOUNT HERE. BUT AT BEST, I
2 THINK IT WAS MISLEADING. SO I SEE A FELLOW WHO IS CONTINUING
3 DOWN A PATH OF TRYING TO BLOW THINGS BY PEOPLE. THERE'S A
4 CERTAIN ARROGANCE INVOLVED IN THAT. NOT EVERYBODY IS DUKE
5 CUNNINGHAM. MR. WILKES ISN'T SMARTER THAN THESE PROSECUTORS
6 OR I DARE SAY HE CAN BLOW ONE BY ME. HE HASN'T.

7 SO I THINK THE NEED FOR SPECIFIC DETERRENCE IS
8 IMPLICATED HERE. HE DOESN'T GET IT. HE DOESN'T GET THAT THIS
9 ISN'T THE WAY TO CONDUCT YOURSELF.

10 I HAVE GLOSSED OVER THIS. I WANT TO GO BACK TO IT
11 BECAUSE IT WAS AN IMPORTANT FACTOR IN MY THINKING, TOO. I WAS
12 IMPRESSED WITH HIS UPBRINGING. HERE'S A FELLOW WHO WAS RAISED
13 BY A SINGLE MOTHER, A NUMBER OF SIBLINGS, FATHER'S NOT AROUND.
14 AND AN IMPRESSIVE GUY. GOES TO COLLEGE.

15 THE TRAGEDY OF THIS WHOLE THING IS I THINK HE'S GOT
16 THE SMARTS AND THE WHEREWITHAL TO HAVE ACCOMPLISHED ALL THIS
17 LEGITIMATELY. HE WOULD MAYBE HAVE HAD TO WORK A LITTLE HARDER
18 AND NOT TAKE ALL THE SHORTCUTS. AND MR. GERAGOS, YOU'VE
19 MENTIONED AT TIMES THAT THERE WAS AN ELEMENT OF CLASS WARFARE.
20 NONE OF THAT AFFECTS MY THINKING HERE. PEOPLE ARE ENTITLED TO
21 HAVE \$100 CIGARS OR FLY ON PRIVATE JETS OR TO HAVE EXPENSIVE
22 MEALS. BUT YOU CAN'T DO THAT WHEN IT'S NOT YOUR MONEY AND
23 IT'S BEING DIVERTED FROM THE TAXPAYERS.

24 THE GOVERNMENT'S POINTED TO THE FACT OF THE
25 NECESSITY FOR SENDING A MESSAGE HERE. I'M NOT BIG ON SENDING

1 MESSAGES IN MOST CASES, BUT I THINK THIS IS A CASE THAT WILL
2 BE LOOKED TO AS A BENCHMARK. WE'VE GOT A LOT OF LOBBYISTS OUT
3 THERE. THERE ARE RULES. THERE ARE LAWS. THERE ARE
4 REGULATIONS. WE HAVE POLITICIANS OUT THERE, AND I DO THINK
5 PEOPLE WILL PAY ATTENTION TO WHAT HAPPENED HERE.

6 I'VE ALLUDED TO THE TRAFICANTE SITUATION. AND
7 THINGS LIKE THAT GET REPORTED, AND PEOPLE REMEMBER THEM. THEY
8 CREATE A BASELINE FOR WHAT HAPPENS OR AT LEAST FAIR WARNING TO
9 PEOPLE WHO ARE GOING TO RISK VIOLATING THE LAW.

10 I'M TOLD THAT I SHOULD LOOK TO THE KINDS OF
11 SENTENCES THAT ARE AVAILABLE AND I SHOULD AVOID UNWARRANTED
12 SENTENCING. AND THIS IS SORT OF AT THE CRUX OF MY THINKING.
13 I LOOK AT THE OTHER PARTICIPANTS IN THIS. DUKE CUNNINGHAM GOT
14 EIGHT AND A HALF YEARS. JOEL COMBS, WHO WAS INVOLVED, GOT
15 IMMUNITY. HE WON'T BE PROSECUTED. I DON'T KNOW. I'M NOT
16 GOING TO TAKE YOUR PROPOSITION ON WHAT HAPPENS TO MR. WADE,
17 BUT I DON'T EXPECT THAT HE'S GOING TO BE GETTING A SENTENCE
18 ANYWHERE IN THE NEIGHBORHOOD OF WHAT IS BEING ADVOCATED TODAY.
19 MR. KONTOGIANNIS HAS PLED GUILTY TO THE CHARGE THAT CARRIES NO
20 MORE THAN TEN YEARS. MR. JOHN MICHAEL, I THINK HIS EXPOSURE
21 IS EVEN LESS. THAT INFORMS MY THINKING TO SOME EXTENT.

22 ON THE OTHER HAND, I THINK MR. HALPERN IS RIGHT TO
23 POINT OUT AND THE CASES HAVE RECOGNIZED, MOST PARTICULARLY THE
24 CASE CITED BY THE GOVERNMENT, U.S. VERSUS EVERE, WHERE BERNIE
25 EVERE GOT A 25-YEAR SENTENCE AND NO ONE ELSE GOT A SENTENCE

1 APPROACHING THAT. THEY GOT FIVE YEARS. AND THE 2ND CIRCUIT
2 SAID, "LOOK, IT'S COMMON SENSE WHEN SOMEBODY FOLDS UP THEIR
3 TENT, ACKNOWLEDGES GUILT, AND COOPERATES WITH THE GOVERNMENT
4 THAT THAT'S GROUNDS FOR LENIENCY. WHEREAS SOMEBODY WHO FIGHTS
5 THE CHARGE AND IS BELLIGERENT AT EACH POINT IN ACKNOWLEDGING
6 THE OBVIOUS DESERVES MORE." THAT'S AT PLAY HERE.

7 YOU DON'T GET PUNISHED HERE, MR. GERAGOS, FOR GOING
8 TO TRIAL. YOU DON'T. I HEAR A LOT OF CASES THAT IN THE
9 PARLANCE REALLY AMOUNT TO SLOW PLEAS. YOU KNOW WHAT THAT
10 MEANS. BUT I DON'T PUNISH PEOPLE FOR GOING TO TRIAL. YOU
11 HAVE A RIGHT. THAT'S THE BEAUTY OF THAT CONSTITUTIONAL
12 PROTECTION UNDER THE 6TH AMENDMENT TO SAY, "PROVE IT. IT'S
13 NOT ENOUGH TO BRING THE ACCUSATION. YOU'VE GOT TO PROVE IT."
14 AND MR. WILKES, I AM NOT PUNISHING YOU FOR EXERCISING YOUR
15 RIGHT TO TRIAL.

16 HAVING SAID THAT, MR. HALPERN IS CORRECT TO POINT
17 OUT THAT THERE'S DIFFERENCES BETWEEN YOUR SITUATION AND THAT
18 OF CONGRESSMAN CUNNINGHAM AND THE OTHERS INVOLVED IN THIS
19 CASE. CONGRESSMAN CUNNINGHAM, ON THE NEGATIVE SIDE OF THE
20 LEDGER FOR HIM, WAS AN ELECTED OFFICIAL. HE HAD A DUTY NOT
21 JUST TO THE PUBLIC NOT TO VIOLATE LAWS, BUT BEYOND THAT. IT
22 WAS HONEST SERVICES. YOUR SITUATION IS DIFFERENT. NO ONE
23 ELECTED YOU AND HAD PUBLIC TRUST IN YOU. IT'S HARDLY A
24 CALLING CARD FOR WHAT HAPPENED HERE OR SOME KIND OF
25 CREDENTIAL, BUT THAT WAS AN AGGRAVATING FACTOR WITH RESPECT TO

1 CUNNINGHAM THAT DOESN'T EXIST IN YOUR CASE. YOU WEREN'T
2 ELECTED.

3 ON THE OTHER HAND, AS MR. HALPERN RECITES, THERE
4 WERE A NUMBER OF MITIGATING FACTORS IN CUNNINGHAM'S CASE THAT
5 DON'T APPLY HERE. YOU'RE NOT IN ILL HEALTH, AS FAR AS I KNOW.
6 I DID CONSIDER THAT. I WAS IMPRESSED AND GAVE CREDIT FOR
7 CUNNINGHAM'S WAR RECORD EVEN THOUGH THE GOVERNMENT SAID HE'D
8 WORN OUT HIS DANCE CARD ON THAT. I TOOK INTO ACCOUNT THAT HE
9 HAD A HIGHER SENTENCE OF DUTY AND HAD ACTED ON THAT AT ONE
10 POINT.

11 I DID WHAT YOU ASKED ME TO DO, MR. WILKES, AND WHAT
12 MR. GERAGOS ASKED ME TO DO. I LOOKED AT THE WHOLE LIFE OF THE
13 PERSON, NOT JUST THE LAST FIVE OR NINE YEARS.

14 IT TOOK GUTS, I THINK, ON CUNNINGHAM'S PART TO
15 FINALLY COME AROUND AND WALK DOWN IN FRONT OF THIS COURTHOUSE
16 AND ADMIT THAT HE WAS CORRUPT AND THAT HE ENGAGED IN CORRUPT
17 ACTS. HE DID SO IN A VERY TEARFUL MANNER. I REMEMBER
18 WATCHING ON TV. THEN HE CAME INTO COURT A BROKEN MAN. WHEN I
19 SENTENCED HIM, I REMEMBER LOOKING AT HIM AND BEING ASTONISHED
20 AT HIS LOOK WHEN HE APPEARED FOR SENTENCING BECAUSE HE'D LOST
21 SO MUCH WEIGHT. HE WAS JUST A SHELL OF HIS FORMER SELF. ALL
22 OF THAT WAS TAKEN INTO ACCOUNT.

23 YOUR SITUATION IS DIFFERENT, MR. WILKES. YOU HAVE
24 NOT, EVEN TO THIS MOMENT, TO THIS VERY MOMENT THAT I SPEAK,
25 INDICATED AT ALL ANY SENSE OF CONTRITION FOR THIS. INSTEAD, I

1 GUESS YOUR APPROACH IS TO SAY "I NEVER DID THIS" UP AGAINST
2 THE WEIGHT OF THE EVIDENCE, THE AVALANCHE OF EVIDENCE. YOU'VE
3 CONTINUED TO DENY WHAT I THINK IS OBVIOUS TO ANY OBSERVER OF
4 THIS, WHICH IS THAT YOU HAD THIS CORRUPT RELATIONSHIP WITH THE
5 CONGRESSMAN, AND YOU PROFITED FROM IT. SO THAT'S DIFFERENT.

6 I DON'T, AS I SAID, PUNISH YOU FOR GOING TO TRIAL,
7 BUT NEITHER DO I REWARD YOU FOR CONTRITION OR ACCEPTING
8 RESPONSIBILITY BECAUSE YOU HAVE NOT.

9 I LOOK AT MR. WADE. I HAVE TAKEN THAT INTO THE
10 CALCULUS. I DON'T KNOW WHERE HE'S GOING TO END UP. NO ONE'S
11 GOING TO ADVOCATE EIGHT AND A HALF YEARS OR 100 MONTHS, 200 OR
12 300 MONTHS FOR WADE. THAT'S NOT GOING TO HAPPEN. YOU AND I
13 BOTH KNOW THAT. THE GOVERNMENT KNOWS THAT, TOO.

14 I'VE LOOKED AT THE OTHERS INVOLVED AND THEIR
15 EXPOSURE. MR. KONTOGIANNIS HAS GOT A PRIOR FOR BRIBERY, AND
16 NOW HE'S PLED GUILTY TO BRIBERY IN FRONT OF ME. HE'S GOT
17 ANOTHER PRIOR. IT'S A DIFFICULT TASK. IT'S APPLES AND
18 ORANGES. THE QUALITATIVE JUDGMENT THAT YOU HAVE TO MAKE ON
19 THIS IS VERY DIFFICULT. THERE'S NOT A FORMULA FOR DOING THIS.
20 IT'S ONE OF THE DIFFICULT THINGS WE DO.

21 NOW, IT WAS INTERESTING THAT YOU MENTIONED
22 MR. LERACH. I EVEN THOUGHT ABOUT THAT THIS WEEKEND IN MY
23 CONSIDERATION. HERE'S A FELLOW WHO YOU SAY AND I THINK THE
24 GOVERNMENT ACKNOWLEDGES HAS CORRUPTED THE LEGAL SYSTEM IN A
25 VERY PROFOUND WAY. NOT THESE PROSECUTORS, BUT THE GOVERNMENT

COMPUTER-AIDED TRANSCRIPTION

1 OF THE UNITED STATES LIMITED HIS EXPOSURE TO TWO YEARS. AND
2 IN TERMS OF THE LEGAL SYSTEM, THE CORRUPTION AND THE HARM DONE
3 THERE WAS, IN MY HUMBLE OPINION, ABOUT ON PAR WITH WHAT HAS
4 HAPPENED HERE. SO I DO TAKE THAT INTO CONSIDERATION AS WELL.
5 I TRY TO LOOK AT THE UNIVERSE OF CASES AND WHAT'S FAIR.

6 THE AGGRAVATORS HERE, FROM MY PERSPECTIVE, IS THAT
7 THERE HAS BEEN NO ACCEPTANCE OF RESPONSIBILITY. THERE HAS
8 BEEN NO CONTRITION. THERE HAS BEEN A COMPOUNDING OF THE
9 DISHONEST CONDUCT THAT LED TO MR. WILKES'S BEING IN THIS
10 COURTROOM BOTH IN TERMS OF -- WELL, IN TERMS OF HIS MAKING
11 FALSE STATEMENTS ON THE STAND.

12 ALL THAT SAID, I THINK THIS IS ONE OF THOSE CASES
13 WHERE THE GUIDELINES PRODUCE A RANGE THAT IS LONGER. YOU
14 ADVOCATED THIS PRINCIPLE OF PARSIMONY, MR. GERAGOS.
15 SUFFICIENT SENTENCE, BUT NOT GREATER THAN NECESSARY TO GET THE
16 POINT ACROSS.

17 MR. WILKES AND I ARE ABOUT THE SAME AGE. YOUR
18 BIRTHDAY IS IN MAY.

19 YOU'LL BE 54 YEARS OLD?

20 THE DEFENDANT: YES.

21 THE COURT: THIS WEEKEND I WAS SITTING OUT WITH A
22 LONG-TIME FRIEND OF MINE. HE'S ABOUT OUR AGE, TOO. AND WE
23 CONCLUDED THAT WHATEVER TIME WE HAVE LEFT, THE NEXT TEN YEARS
24 IS PROBABLY GOING TO BE BEST OF THAT TIME THAT'S LEFT. AND
25 SOME SAY THE BEST YEARS ARE BEHIND US NOW. I'M NOT SURE OF

1 THAT. BUT I'M FAIRLY CONFIDENT THAT DURING THE NEXT TEN
2 YEARS, IT'S GOING TO BE THE BEST OF WHAT'S LEFT. THEN OLD AGE
3 STARTS TO CREEP IN, AND YOUR JOINTS GIVE OUT ON YOU.

4 I THINK IT'S A SIGNIFICANT PENALTY, MR. WILKES, FOR
5 YOU AT YOUR AGE AND YOUR STATION IN LIFE WITH FAMILY
6 RESPONSIBILITIES TO BE IN PRISON DURING THAT TIME. I THINK
7 THAT'S A SIGNIFICANT PENALTY IN ITS OWN RIGHT.

8 I HAVE CONCLUDED THAT THE APPROPRIATE SENTENCE IN
9 THIS CASE, TAKING INTO CONSIDERATION ALL OF THESE HUMAN
10 FACTORS, THE GOOD AND THE BAD, IS THAT YOU SHOULD BE SENTENCED
11 TO 144 MONTHS, A 12-YEAR SENTENCE. THAT WILL PUT YOU OUT
12 SOMEWHERE AROUND YOUR 64TH BIRTHDAY. IT WILL GIVE YOU A
13 CHANCE TO MAYBE ATONE FOR THIS IF YOU'RE WILLING AT THAT
14 POINT. MAYBE WHEN IT'S SETTLED BY THE COURT OF APPEALS,
15 YOU'LL ACCEPT THE JUDGMENT.

16 I WISH YOU WOULD DO SO TODAY. IT WOULD GIVE COMFORT
17 TO THESE FAMILY MEMBERS OF YOURS WHO ARE SITTING OUT HERE
18 BELIEVING WHAT YOU'VE SAID; THAT NONE OF THIS WAS ILLEGAL ON
19 YOUR PART, THAT YOU WERE ALL WELL-INTENTIONED. I WISH YOU
20 WOULD DO THAT BECAUSE I THINK IT WOULD ALLOW THE TIME TO PASS
21 FOR THEM IN AN EASIER MANNER THAN IT WILL OTHERWISE.

22 AT THE END OF THE DAY, I THINK THAT A 144-MONTH
23 SENTENCE IS SUFFICIENT, BUT NOT GREATER THAN IS NECESSARY.
24 IT'S LONGER THAN CONGRESSMAN CUNNINGHAM'S SENTENCE, BUT THERE
25 ARE GOOD OBJECTIVE REASONS FOR THAT. IT TAKES INTO ACCOUNT

COMPUTER-AIDED TRANSCRIPTION

1 WHAT'S HAPPENED OR LIKELY WILL HAPPEN TO THE OTHER PEOPLE THAT
2 WERE INVOLVED IN THIS CASE. IT'S A SUBSTANTIAL VARIANCE FROM
3 THE BOTTOM END OF THE GUIDELINES.

4 BUT HERE, AS I'VE SAID, I THINK THERE ARE FACTORS
5 UNDER 3553(A) THAT WERE NOT ACCOUNTED FOR FULLY BY THE
6 GUIDELINE RANGE. WHEN I LOOK AT THE PERSON OF MR. WILKES AND
7 HIS AGE AND HIS STATION IN LIFE AND THE EFFECT THAT THIS
8 PENALTY WILL HAVE ON HIM DURING THIS NEXT TEN YEARS, I BELIEVE
9 IN MY HEART AS WELL AS IN MY MIND THAT IT'S THE APPROPRIATE
10 MEASURE OF PUNISHMENT FOR THESE CRIMES THAT HE COMMITTED.

11 SO THE SENTENCE AND JUDGMENT OF THE COURT,
12 MR. WILKES, IS THAT YOU SHOULD SPEND 144 MONTHS IN THE CUSTODY
13 OF THE ATTORNEY GENERAL.

14 I AM IMPOSE A \$100 PENALTY PER COUNT FOR A TOTAL OF
15 \$1300.

16 THE COURT, ALTHOUGH A FINE HAS NOT BEEN ADVOCATED,
17 ALSO BELIEVES A FINE IS APPROPRIATE. MR. GERAGOS, I HAVEN'T
18 ALLOWED YOU TO SPEAK TO THAT. I WILL NOW. LET ME TELL YOU,
19 TO ELABORATE A LITTLE BIT, THIS IS NOT SOMETHING I TOOK INTO
20 CONSIDERATION IN FIXING HIS SENTENCE. NOT AT ALL. BUT I'M
21 CONVINCED AT A MINIMUM THAT I WAS MISLED BY THE FINANCIAL
22 DECLARATION THAT HE FILED. I BELIEVE HE HAS SUBSTANTIAL
23 ASSETS. I BELIEVE HE COULD HAVE HIRED HIS OWN COUNSEL IN THE
24 OTHER CASE. IT'S A LITTLE GALLING TO ME, I HAVE TO ADMIT TO
25 YOU, THAT WITH ALL OF THIS GOING ON, ON TRIAL FOR FRAUD AND

COMPUTER-AIDED TRANSCRIPTION

1 DISHONESTY, THAT HE WOULD PERPETUATE THAT BY SUBMITTING AN
2 AFFIDAVIT TO ME. I'M NOT GOING TO MAKE A FINDING ABOUT
3 PERJURY ON THE AFFIDAVIT. I'LL LEAVE THAT FOR ANOTHER DAY.
4 AT A MINIMUM, IT WAS MISLEADING.

5 I THINK HE HAS SUBSTANTIAL ASSETS. I THINK HE'S GOT
6 HIS HOME, WHICH HAS BEEN PLEDGED. HE'S GOT EQUITY IN OTHER
7 PROPERTIES, WHICH HE HAS NOT ACTIVELY REVEALED. AND I THINK
8 PART OF THE PUNISHMENT HERE HAS TO BE A PROVISION THAT HE PAY
9 BACK SOME OF THE MONEY.

10 I'M INCLINED TO IMPOSE A FINE IN THIS CASE OF
11 \$1 MILLION. I THINK HE HAS THE WHEREWITHAL TO PAY THAT FINE.
12 I THINK IT'S AN APPROPRIATE ADJUNCT TO THE CUSTODIAL SENTENCE.
13 I WANT TO GIVE YOU THE OPPORTUNITY TO SPEAK TO THAT.

14 MR. GERAGOS: IF I COULD, IF THE COURT WAS GOING TO
15 OFFER THAT AGAINST THE AMOUNT THAT THE PURPOSEFUL GRAND JURY
16 LEAKS CAUSED TO APPEALING THE SALE OF THE OFFICE BUILDING, AS
17 THE COURT WILL REMEMBER WHEN WE WERE TALKING ABOUT THE GRAND
18 JURY LEAKS IN THIS CASE, IT WAS OUR POSITION AND IS OUR
19 POSITION THAT ONE OF THE MAIN REASONS THAT THAT HAPPENED PRIOR
20 TO WAS BECAUSE THERE WAS A SALE OF THAT OFFICE BUILDING AT AN
21 AMOUNT --

22 THE COURT: YOU'RE GIVING TOO MUCH CREDIT TO WHOEVER
23 IT WAS THAT LEAKED. WHOEVER LEAKED THIS INFORMATION MAYBE
24 WANTED TO STRENGTHEN A RELATIONSHIP THAT THAT PERSON MAY HAVE
25 HAD WITH THE PRESS. MAYBE THEY WANTED TO PREJUDICE A LITTLE

COMPUTER-AIDED TRANSCRIPTION

1 BIT IN ADVANCE. BUT I NEVER THOUGHT THAT SOMEBODY HAD IN MIND
2 "OH, HE'S GOT A BUILDING FOR SALE. I CAN REALLY SCREW THAT
3 UP."

4 MR. GERAGOS: EXCEPT MY INVESTIGATION REVEALED, AT
5 LEAST WITH THE LAWYERS AND THE BROKERS WHO WERE INVOLVED, THAT
6 SPECIFICALLY BECAUSE OF THOSE LEAKS CALLED THEM TO PUT THE
7 SCHOOL DISTRICT -- PUT THAT ON THE AGENDA. THE SCHOOL
8 DISTRICT THEN CONTACTED THE U.S. ATTORNEY'S OFFICE AND
9 ACTUALLY HAD CONVERSATIONS WITH MR. HALPERN ABOUT WHETHER OR
10 NOT THEY COULD GO FORWARD WITH THAT DEAL. OUT OF POCKET, IT
11 WAS A CLEARLY DEFINABLE LOSS OF OVER \$3 MILLION.

12 THE COURT: IF IT COMES IN FRONT OF ME AT SOME POINT
13 THAT A PERSON LEAKED GRAND JURY INFORMATION ON THIS CASE, I'LL
14 HANDLE IT APPROPRIATELY. I'LL BE THAT FELLOW WITH A VERY
15 STIFF SENTENCE THAT YOU ALLUDED TO. I DON'T THINK THERE'S
16 MUCH CONNECTION BETWEEN THAT AND THE PROPOSITION HERE THAT
17 PART OF THE PUNISHMENT IN THIS CASE OUGHT TO BE FINANCIAL
18 GIVEN THE DEFENDANT'S TRACK RECORD. I THINK HE DOES HAVE THE
19 MEANS TO PAY THAT FINE.

20 I'M NOT SURE, FRANKLY, LOOKING AT EVERYTHING AND NOW
21 KNOWING I WAS DECEIVED BY A PHONY FINANCIAL AFFIDAVIT, THAT
22 I'VE ACCOUNTED FOR ALL OF THE ASSETS. THEY COULD BE
23 SQUIRRELED AWAY SOMEWHERE. THAT'S A VERY REAL POSSIBILITY IN
24 MY MIND.

25 MR. GERAGOS: EXCEPT PART OF WHAT THE COURT SHOULD

COMPUTER-AIDED TRANSCRIPTION

1 BE MISLED BY -- AND I DON'T KNOW IF THE COURT SAW THE MOST
2 RECENT FILING BY FEDERAL DEFENDERS, BUT WE SENT IN THE E-MAIL.
3 THE GOVERNMENT KNEW EXACTLY WHAT WAS GOING ON AT ALL TIMES.

4 THE COURT: THAT MAY BE. I DIDN'T. I GOT AN
5 AFFIDAVIT THAT ESSENTIALLY ZEROED THINGS OUT. AND I'VE GOT TO
6 TELL YOU, THE MISLEADING ASPECT OF IT WAS "OH, NO. SUPERIOR
7 COURT IS SCRUTINIZING ALL OF THIS AND CONTROLLING ALL OF
8 THIS," AND THAT'S NOT TRUE. THAT'S NOT TRUE.

9 AT THE VERY TIME THAT MR. WILKES WAS PLEADING
10 POVERTY TO ME, HE'S TAKING DISBURSEMENTS TO HIMSELF UP TO
11 \$65,000 A MONTH. AND I'M NOT GOING TO REVEAL EXACTLY WHAT WAS
12 IN THERE. I'M GOING TO SPEAK IN A HIGH LEVEL OF GENERALITY.
13 AND HE WAS MAKING PAYMENTS TO RETAINED LAWYERS OF \$90,000.
14 THAT'S NOT A GUY WHO OUGHT TO BE ON THE PUBLIC'S NICKEL IN
15 BEING DEFENDED IN THIS CASE, MR. GERAGOS. YOU AND I BOTH KNOW
16 THAT. IT'S OFFENSIVE TO ME THAT MR. WILKES WILL TRY TO BLOW
17 THAT BY ME.

18 MR. GERAGOS: IF THE COURT WANTED TO HAVE A HEARING
19 ON THAT, I THINK THAT I COULD TURN THE COURT AROUND ON THAT.
20 I THINK IF THE COURT UNDERSTOOD EXACTLY WHAT WAS GOING ON AND
21 WHAT THE GIVE BACK AND FORTH WAS WITH THE GOVERNMENT, I JUST
22 DON'T THINK THAT ANYBODY IS BLOWING ANYTHING PAST YOU.

23 THE COURT: THEY OBJECTED AT THE TIME. I TOLD THEM
24 IF THEY HAD CONTRARY EVIDENCE, THEY COULD SUBMIT IT. BOTH
25 SIDES HAVE NOW SUBMITTED ADDITIONAL EVIDENCE. I'VE REVIEWED

1 IT ALL. I'VE CAREFULLY GONE OVER IT. I'M NOT AN ACCOUNTANT,
2 AND I DON'T HAVE THE SAME HEAD FOR NUMBERS THAT MR. WILKES
3 DOES. BUT I CAN SEEN ENTRIES.

4 I DON'T UNDERSTAND WHY IN NOVEMBER AT HIS REQUEST IN
5 A LAWYER TRUST FUND HE GETS \$65,000, AND YET HE COMES IN AND
6 TELLS US "I NEED THE GOVERNMENT TO PAY FOR MY LAWYER IN THE
7 WILKES/FOGGO MATTER." THAT'S AGGRAVATING TO ME. AS I SAID,
8 PUTTING ASIDE, I GAVE IT NO EFFECT IN FASHIONING THE SENTENCE.
9 BUT IT DOES INFORM THE QUESTION OF WHETHER HE HAS RESOURCES TO
10 PAY A FINE, AND I THINK HE DOES. AND I THINK APPLYING IT IS
11 AN APPROPRIATE COMPONENT OF HIS SENTENCE HERE.

12 DO YOU HAVE ANYTHING MORE ON HIS ABILITY?

13 MR. GERAGOS: I THINK CLEARLY ALL THE COURT HAS AT
14 THIS POINT IS WHAT IT HAS BEEN GIVEN WHETHER YOU BELIEVE IT TO
15 BE MISLEADING, WHICH WE OBVIOUSLY CONTEST. AND A MILLION
16 WOULD BE GROSSLY DISPROPORTIONATE TO WHAT THE COURT HAS BEFORE
17 IT.

18 THE COURT: WHAT'S THE EQUITY IN HIS HOME? HE'S GOT
19 A BOND OF \$2 MILLION SECURED BY HIS HOME.

20 MR. GERAGOS: WELL, AT THE TIME I BELIEVE THE EQUITY
21 WAS 800,000.

22 THE COURT: I'M TALKING ABOUT TODAY.

23 MR. GERAGOS: TODAY, I DON'T THINK IT'S EVEN CLOSE
24 TO THAT.

25 THE COURT: THERE'S BEEN PAYOFFS SINCE THEN.

COMPUTER-AIDED TRANSCRIPTION

1 MR. GERAGOS: I UNDERSTAND THAT, BUT THIS IS NOT
2 EXACTLY A HOTBED OF THE REAL ESTATE MARKET HERE.

3 THE COURT: I GET THAT.

4 MR. GERAGOS: IT WOULD NOT SURPRISE ME OVER AND
5 ABOVE THE PAYOFF IF THE EQUITY HAS BEEN WIPED OUT OVER THE
6 LAST YEAR. MR. HALPERN INDICATES THAT IT'S ALMOST A YEAR TO
7 THE DAY. I CAN TELL YOU THAT IF YOU JUST READ THE BUSINESS
8 JOURNALS AND FOLLOW THE REAL ESTATE MARKET, A TEN PERCENT
9 DOWNTURN OR A 25 PERCENT DOWNTURN IS NOT SOMETHING THAT'S OUT
10 OF THE ORDINARY IN THIS MARKET, ESPECIALLY IN THAT PRICE
11 RANGE. THAT PRICE RANGE HAS TAKEN ONE OF THE BIGGEST HITS
12 ANYWHERE.

13 THE COURT: WHAT'S THE GOVERNMENT'S VIEW ON THE
14 APPROPRIATENESS OF A FINE AND THE DEFENDANT'S ABILITY TO PAY A
15 FINE?

16 MR. FORGE: WE DO THINK A FINE IS APPROPRIATE FOR
17 THE REASONS YOUR HONOR POINTED OUT. OBVIOUSLY, WE SHARE THE
18 SAME CONCERNS THE COURT DOES REGARDING MR. WILKES'S FINANCIAL
19 WHEREWITHAL. WE DON'T HAVE AS MUCH INFORMATION AS YOU DO ON
20 THIS FRONT. WE DO HAVE ENOUGH. WE PRESENTED IT TO YOU.
21 ENOUGH TO SHOW THAT HE HAS CERTAINLY HAD ACCESS TO, IN SOME
22 FORM OR ANOTHER, UPWARDS OF \$1.5, \$1.6 MILLION JUST SINCE THE
23 TIME HE SUBMITTED THAT FINANCIAL AFFIDAVIT.

24 FOR ME WHAT REALLY GUIDES MY POSITION ON THIS IS
25 HE'S NEGOTIATING SETTLEMENTS WITH VARIOUS CREDITORS. HE'S

1 PAYING TENS OF THOUSANDS OF DOLLARS TO LAWYERS. TO ME THAT
2 SMACKS OF SOMEBODY WHO'S PROTECTING A POT OF MONEY. IF HE WAS
3 IN THE RED, IF HIS NET VALUE WAS NEGATIVE, THERE'S NO REASON
4 TO THROW THAT GOOD MONEY AFTER BAD. BUT TO ME THAT SMACKS AS
5 SOMEBODY WHO HAS MONEY TO PROTECT. I THINK THE PAPERS,
6 LIMITED AS THEY MAY BE, THAT WE'VE SUBMITTED CORROBORATE THAT.

7 THE COURT: DO YOU HAVE ANY EVIDENCE THAT THERE ARE
8 ASSETS HELD OTHER THAN HERE IN THE UNITED STATES?

9 MR. FORGE: NO, YOUR HONOR, WE DO NOT.

10 THE COURT: TAKING INTO ACCOUNT, MR. GERAGOS, YOUR
11 INPUT ABOUT THE FALLEN VALUE OF PROPERTY, THE COURT FINDS THAT
12 A \$500,000 FINE IS APPROPRIATE. THAT IS ROUGHLY CONSISTENT
13 WITH THE AMOUNT OF BRIBES THAT I FIND HE GAVE. THE FIGURE
14 CAME OUT A LITTLE HIGHER THAN THAT. I THINK THAT IS
15 PROPORTIONATE. I THINK THERE SHOULD BE A FINANCIAL COMPONENT
16 TO THIS. I FIND MR. WILKES DOES HAVE, BASED ON THE BEST
17 INFORMATION I HAVE TO DATE, THE ABILITY TO PAY A \$500,000
18 FINE. SO I ASSESS THAT AS WELL.

19 NOW, IN TERMS OF HOW THE JUDGMENT READS, I IMPOSE
20 THE SENTENCE ON THE BRIBERY COUNT, COUNT 13 --

21 IS THAT CORRECT?

22 MR. BHANDARI: YES, YOUR HONOR.

23 THE COURT: THAT'S THE OFFENSE THAT CARRIES A
24 SENTENCE OF UP TO 15 YEARS. SO THIS IS WITHIN THE STATUTORY
25 MAXIMUM. I HAVE CONFIRMED AND TAKEN INTO CONSIDERATION THE

1 GUIDELINES. I HAVE GIVEN THE GUIDELINES WEIGHT. I FIND AT
2 THE END OF THE DAY, THOUGH, APPLYING THE PRINCIPLE THAT I MUST
3 NOW APPLY, SUFFICIENT BUT NOT GREATER THAN NECESSARY, THAT THE
4 144-MONTH SENTENCE FITS THAT BILL FOR THE REASONS I'VE
5 ARTICULATED.

6 THE SENTENCE SHALL RUN CONCURRENTLY, TO THE EXTENT
7 POSSIBLE, ON THE OTHER COUNTS WHERE THE SENTENCE -- IT CAN DO
8 SO ON ALL THE COUNTS BECAUSE THE OTHERS ARE PUNISHABLE BY
9 20 YEARS EXCEPT FOR THE CONSPIRACY COUNT, WHICH IS FIVE YEARS.
10 I RUN IT CONCURRENTLY ON THAT COUNT UP TO A PERIOD OF FIVE
11 YEARS.

12 THE COURT ALSO IMPOSES A PERIOD OF SUPERVISED
13 RELEASE WHICH WILL FOLLOW MR. WILKES ONCE HE'S RELEASED FROM
14 CUSTODY. THE PERIOD OF TIME OF SUPERVISED RELEASE WILL BE
15 THREE YEARS. IT WILL RUN CONCURRENTLY.

16 MR. WILKES, HERE ARE THE TERMS OF SUPERVISED RELEASE
17 ONCE YOU'VE COMPLETED YOUR JAIL SENTENCE:

18 YOU'RE NOT TO POSSESS FIREARMS, EXPLOSIVE DEVICES,
19 OR OTHER DANGEROUS WEAPONS.

20 YOU'RE NOT TO OPEN CHECKING ACCOUNTS OR INCUR ANY
21 CREDIT CARD CHARGES OR ADDITIONAL LINES OF CREDIT WITHOUT
22 APPROVAL OF THE PROBATION OFFICER.

23 YOU'RE TO GIVE A COMPLETE ACCURATE ACCOUNTING OF
24 YOUR PERSONAL AND BUSINESS FINANCIAL RECORDS TO THE PROBATION
25 OFFICER.

COMPUTER-AIDED TRANSCRIPTION

1 YOU MUST SUBMIT TO A SEARCH OR YOUR PERSON,
2 PROPERTY, RESIDENCE, OR VEHICLE AT A REASONABLE TIME AND IN A
3 REASONABLE MANNER AS DIRECTED BY THE PROBATION OFFICER.

4 YOU'RE TO REPORT TO THE PROBATION OFFICER ALL
5 VEHICLES YOU OWN, OPERATE, OR HAVE AN INTEREST IN.

6 ANY OTHER CONDITIONS THE GOVERNMENT THINKS ARE
7 WARRANTED IN LIGHT OF THE OFFENSE AND THE OFFENDER?

8 MR. BHANDARI: NO OTHER SUPERVISED RELEASE
9 CONDITIONS. WE DID WANT TO SPEAK TO FORFEITURE.

10 THE COURT: MR. BHANDARI, WE'RE A LITTLE JAMMED ON
11 THAT, I THINK, BECAUSE I RELEASED THE JURY WITHOUT BEING
12 REMINDED BY YOU IN ASKING THAT THEY GO BACK IN AND DELIBERATE
13 ON A FORFEITURE ALLEGATION. MY MISTAKE AND YOURS, TOO. I
14 DON'T THINK IT'S SELF-EXECUTING. HE'S ENTITLED TO A JURY
15 TRIAL ON THAT.

16 MR. BHANDARI: WITH RESPECT, WE DISAGREE. WE SET
17 FORTH OUR POSITION IN OUR MEMORANDUM, WHICH CITED A FEW CASES
18 ESTABLISHING THAT IT'S THE DEFENDANT'S OBLIGATION TO
19 SPECIFICALLY AND EXPRESSLY IN OPEN COURT ASK FOR A JURY TRIAL
20 ON FORFEITURE SPECIFICALLY AND THAT A DEFENDANT WHO STANDS
21 SILENT WHILE THE JURY IS DISCHARGED, WHICH IS EXACTLY WHAT
22 HAPPENED HERE, AFTER A GUILTY VERDICT, THE DEFENDANT WAIVES
23 HIS RIGHT TO A JURY DETERMINATION OF FORFEITURE.

24 IN THAT MEMO, WE EXPLAINED THAT IT MADE SENSE TO DO
25 THE FORFEITURE DETERMINATION AT SENTENCING WHEN YOUR HONOR WAS

COMPUTER-AIDED TRANSCRIPTION

1 GOING TO BE REVIEWING THE EVIDENCE RELATING TO PROCEEDS,
2 RELATING TO THE PROPERTY INVOLVED IN THE CRIMES. AND WHY DO
3 THE SAME DETERMINATION TWICE? THAT'S WHY WE'RE HERE NOW.

4 THE COURT: HAS THE ISSUE BEEN MOOTED BY THE COURT'S
5 IMPOSITION OF A FINE IN THIS CASE?

6 MR. BHANDARI: NO, YOUR HONOR. FORFEITURE IS
7 STATUTORILY MANDATED. THE COURT MUST IMPOSE FORFEITURE WHERE
8 THE DEFENDANT HAS BEEN FOUND GUILTY ON CHARGES THAT BEAR
9 FORFEITURE. AND THE COURT'S FINDINGS THAT THE 525,000 AND THE
10 111,000, THE 636,000 WOULD BE STATUTORILY MANDATED.

11 THE COURT: MR. GERAGOS.

12 MR. GERAGOS: THAT'S NOT THE CASE. THE ONUS WAS ON
13 THEM. WHEN THEY LET THE JURY WALK OUT -- AND YOU'LL REMEMBER
14 YOU ASKED THEM WHY THEY DIDN'T BRING IT UP, AND THEY GAVE
15 CERTAINLY A DIFFERENT EXPLANATION THAN THEY GAVE TODAY. THEY
16 DID NOT SAY THAT THE ONUS WAS ON THE DEFENSE. THEY SAID,
17 "WELL, WE FORGOT. AND WE DIDN'T PUT IT IN OUR PLEADINGS."

18 THE COURT: HE SAYS NOW, THOUGH -- AND I'VE LOOKED
19 AT THE CASE. I THINK HE'S CORRECT IN CHARACTERIZING IT. HE
20 SAYS NOW THAT THAT AMOUNTS TO A WAIVER WHEN THE DEFENDANT
21 DOESN'T OBJECT AND HAVE ME HOLD THE JURY TO RULE ON THAT.

22 MR. GERAGOS: I BELIEVE THE COURT DID --

23 THE COURT: I DON'T THINK WE TALKED ABOUT
24 FORFEITURE.

25 MR. GERAGOS: WE TALKED ABOUT FORFEITURE.

COMPUTER-AIDED TRANSCRIPTION

1 THE COURT: BEFORE THE JURY --

2 MR. GERAGOS: AFTER YOU HAD RELEASED THEM, WITHIN
3 THE SAME TIME PERIOD, THE JURY VERDICT CAME BACK AND --

4 THE COURT: ONCE THEY'RE OUT THE DOOR,
5 MR. GERAGOS --

6 MR. GERAGOS: WE TALKED ABOUT IT, AND YOU SAID THAT
7 THEY WAIVED IT. AND I AGREED AND SAID THAT YOU COULD NOT
8 BRING THEM BACK.

9 THE COURT: LET ME SAY THIS, THEN: TO THE EXTENT
10 THAT FORFEITURE IS MANDATORY, I'LL ALLOW BOTH SIDES TO APPEAL
11 THIS ORDER.

12 THE COURT FINDS, FOR THE SAME REASONS I'VE GIVEN
13 ABOUT THE VALUATION, THE MANDATORY AMOUNT IS \$636,116. THAT'S
14 THE AMOUNT OF THE 525,000 BRIBE, THE 100,000 BRIBE, AND THE
15 11,116.

16 AM I RIGHT?

17 MR. BHANDARI: 636,000 IS 525- PLUS 11- AND 100-.

18 THE COURT: I ORDER THAT AS THE MANDATORY
19 RESTITUTION AMOUNT. MR. GERAGOS, IF I'M WRONG THAT IT'S NOT
20 FORFEITED ON YOUR PART BY A WAIVER, I EXPECT THAT YOU'LL TAKE
21 THAT UP AND MAKE ME STRIKE THAT PORTION FROM THE JUDGMENT IF
22 THAT'S INCORRECT. I'M RELYING ON THE CASES CITED BY
23 MR. BHANDARI, AND I FIND THAT THE PROVISION IS MANDATORY.

24 I'VE GOT TO SAY, MR. BHANDARI, HAVING IMPOSED A
25 \$500,000 --

1 MR. GERAGOS: I THINK THERE'S A DOUBLE-JEOPARDY
2 ASPECT TO THIS.

3 THE COURT: HE SAYS NO JURY TRIAL RIGHT IF IT'S
4 WAIVED. HE'S SAYING BY STANDING SILENT OR AT LEAST NOT
5 OBJECTING BEFORE THE JURY WAS RELEASED, IT'S BEEN WAIVED. SO
6 I FIND IN THIS CASE THAT THERE HAS BEEN A WAIVER. I INVITE
7 YOU TO TAKE THAT ISSUE TO THE COURT OF APPEALS. BECAUSE
8 FRANKLY, THE \$500,000 FINE ACCOMPLISHES THE SAME THING. IT'S
9 GOING TO BE PAID BACK THE SAME WAY. THIS IS PUBLIC CORRUPTION
10 AFTER ALL. THE VICTIM IS THE PUBLIC.

11 MR. GERAGOS: THE COURT INFORMS ITS DECISION TO GIVE
12 THE \$500,000 FINE, I ASSUME, BASED, IN PART, ON THE EXACT
13 PREDICATES COMING UNDER THE STATUTE.

14 THE COURT: I DO. I'M BUFFETED HERE BECAUSE I'M
15 TOLD IT'S A MANDATORY PROVISION. IT'S ERROR FOR ME TO IGNORE
16 IT.

17 AND THE QUESTION IS WHERE'S THE FAULT?

18 MR. GERAGOS: THEN ELIMINATE THE FINE.

19 THE COURT: HERE'S WHAT I'LL DO: WITH RESPECT TO
20 THE FINE, I'M GOING TO ORDER THAT IF THE RESTITUTION ORDER IS
21 AFFIRMED BY THE COURT OF APPEALS, THEN I'LL STAY THE FINE.

22 MR. BHANDARI: DOES YOUR HONOR FIND THAT THE 636,000
23 IS RESTITUTION OR FORFEITURE?

24 THE COURT: I FIND THAT'S TO BE FORFEITED UNDER THE
25 MANDATORY ACT. AS I SAID, IF THAT FINDING IS AFFIRMED, THEN

1 THE FINE IS STAYED. THE FINE IS AN ALTERNATIVE TO THE PAYMENT
2 OF RESTITUTION BECAUSE BOTH WERE IMPOSED, IN MY JUDGMENT, TO
3 COVER THE SAME WRONGS HERE.

4 NOW, THERE IS PENDING BEFORE THE COURT A MOTION FOR
5 BAIL PENDING APPEAL. I'VE READ THE PAPERS. I'VE READ THE
6 OPPOSITION. I'M HAPPY TO HEAR FROM YOU ON THAT, MR. GERAGOS.

7 MR. GERAGOS: WE'VE GOT THE OTHER ISSUE OF MY MOTION
8 TO --

9 THE COURT: I'M NOT INCLINED TO DO THAT IN LIGHT OF
10 WHAT I SAID ABOUT THE FINANCIAL AFFIDAVIT. I DIDN'T MISREAD
11 THAT, MR. GERAGOS. I WENT BACK VERY CAREFULLY THIS WEEKEND,
12 AND I WENT THROUGH IT.

13 I UNDERSTAND THAT AT TIMES ON THIS CASE I ALLOWED
14 THE FEDERAL DEFENDER TO BE INVOLVED. I'M NOT ENTHUSIASTIC
15 ABOUT DOING THAT ANY FURTHER NOW THAT I KNOW WHAT THE
16 DEFENDANT'S FINANCIAL WHEREWITHAL IS.

17 MR. GERAGOS: THE PROBLEM WITH THAT, AT LEAST FROM A
18 PRELIMINARY STANDPOINT, IS THAT I BELIEVE THAT THAT WAS RAISED
19 IN THE CONTEXT OF THE 2-9 CASE AS OPPOSED TO THE 3-0 CASE.

20 THE COURT: YOU FILED A MOTION. THAT'S WHAT I'M
21 DEALING WITH NOW.

22 MR. GERAGOS: AND SPECIFICALLY, I THINK THAT I
23 REFERENCED THE SPECIFIC RULE, WHICH WAS 9-1.2(E). WHEN A
24 DEFENDANT IS ON BAIL AT THE TIME THE MOTION IS FILED IN THIS
25 COURT, THE BAIL WILL REMAIN IN EFFECT UNTIL THE COURT RULES ON

1 THE MOTION.

2 SPECIFICALLY UNDER 3143, WE HAVE GOT THAT THERE'S NO
3 FLIGHT RISK. HE'S NO DANGER TO THE COMMUNITY. HE'S NEVER
4 LIVED, ABSENT, AS THE COURT HEARD, FOR VARIOUS PERIODS OF TIME
5 IN SOME OTHER PARTS OF THE U.S. HE'S THE FATHER OF FOUR. TWO
6 OF THEM ARE MINORS. HE EMPLOYS OR HE'S DEALING WITH HIS
7 ELDERLY MOTHER AS WELL, AS THE COURT KNOWS. HE WAS BORN AND
8 RAISED IN SAN DIEGO. HE'S BEEN ACTIVE IN THE COMMUNITY.
9 YOU'VE GOT ALL OF THE LETTERS. HE WAS EDUCATED HERE, WENT TO
10 SCHOOL HERE, RECEIVED HIS DEGREE HERE. YOU'VE GOT A
11 SIGNIFICANT AMOUNT ON THE BOND.

12 OBVIOUSLY, THERE IS GOING TO BE AN ISSUE ON THE FINE
13 VERSUS THE STATUTORY FORFEITURE. I DON'T BELIEVE THERE IS
14 ANYTHING ALONG THE LINES OF AN ECONOMIC DANGER. I THINK THE
15 CASE IS FRIEDMAN.

16 THE COURT: HOLD ON FOR ONE SECOND.

17 IF YOU GENTLEMAN WILL STAY, I DO INTEND TO TAKE UP
18 THE CIVIL PRE-TRIAL MATTER AS SOON AS WE'RE DONE HERE.

19 MR. GERAGOS: I DO NOT THINK THERE HAS BEEN ANY
20 SUGGESTION THAT THE APPEAL WILL BE DELAYED. I THINK THIS
21 COURT WOULD KNOW INTUITIVELY THAT'S NOT THE CASE.

22 THE COURT: I DON'T THINK IT'S FOR DELAY. I DON'T
23 THINK HE'S A FLIGHT RISK. I DISAGREE WITH YOU ABOUT THE
24 DANGER BECAUSE THE 9TH CIRCUIT HAS MADE CLEAR THAT IT INCLUDES
25 ECONOMIC DANGER. AND, AS I SAID, HERE'S A FELLOW WHO WAS ON

1 TRIAL FOR FRAUD AND BRIBERY AND FINANCIAL CRIMES. HE
2 COMPOUNDS AND PERPETUATES THOSE PROBLEMS BY TESTIFYING
3 FALSELY.

4 HERE THE MATTER OF THE SUBMISSIONS COMES UP TO ME.
5 AS I SAID, I WON'T GO SO FAR AS TO MAKE A FINDING ABOUT
6 PERJURY, BUT IT'S HIGHLY MISLEADING. YOU KNOW WHAT'S
7 INTERESTING, MR. GERAGOS? WHEN I ASKED YOU AT THE TIME
8 WHETHER YOU THOUGHT HE QUALIFIED FOR COUNSEL AT THE INCEPTION
9 OF THIS, YOU SAID, "NO." I'M ASSUMING YOU WERE PRIVY THEN TO
10 THE INFORMATION I AM NOW PRIVY TO.

11 I WOULD HAVE AGREED WITH THAT ANSWER. THAT WAS AN
12 HONEST ANSWER; THAT "NO, HE CAN AFFORD HIS OWN LAWYER." HE
13 DOESN'T GET TO TAKE 65,000 A MONTH PAYOUTS. HE DOESN'T GET TO
14 FUND EDUCATION ACCOUNTS AND DO ALL THESE OTHER THINGS TO SUIT
15 HIS PERSONAL CONVENIENCE AND THEN HAVE THE TAXPAYERS PAY FOR
16 HIS LAWYER.

17 I ASKED MYSELF A GUY THAT'S GOING TO TAKE THE STAND
18 AND LIE UNDER OATH AND THEN SUBMITS A FINANCIAL DECLARATION TO
19 A FEDERAL JUDGE THAT'S MISLEADING, IS THAT GUY GOING TO
20 CONTINUE TO POSE AN ECONOMIC DANGER TO THE COMMUNITY? IS
21 THERE A CHANCE THAT HE'S GOING TO DEFRAUD OTHERS OR CONTINUE
22 TO DEFRAUD THE LEGAL SYSTEM?

23 REMEMBER HERE I'M GOOD AT APPLYING STANDARDS.
24 YOU'VE GOT TO SHOW BY CLEAR AND CONVINCING EVIDENCE THAT HE'S
25 NOT A DANGER. MY INCLINATION AT THIS POINT IS TO ALMOST FIND

1 ON THE OTHER SIDE.

2 MR. GERAGOS: EXCEPT I DON'T THINK THAT AN ECONOMIC
3 DANGER IN THIS CIRCUIT IS GOING TO CONSTITUTE --

4 THE COURT: U.S. VERSUS REYNOLDS, 952 FED. 2D. 192,
5 "IF A RELEASE OF THE DEFENDANT WOULD POSE A RISK OF ECONOMIC
6 OR PECUNIARY HARM TO THE COMMUNITY, THE DANGER ELEMENT IS
7 MET."

8 MR. GERAGOS: THE COURT CITED WHICH CASE?

9 THE COURT: REYNOLDS, 952 FED. 2D. 192. JUDGE
10 WALLACE WAS ON THE PANEL. "THE TERM 'DANGER' ENCOMPASSES
11 ECONOMIC DANGER. THAT IS, IF A RELEASE OF THE DEFENDANT WOULD
12 POSE A RISK OF ECONOMIC OR PECUNIARY HARM TO THE COMMUNITY,
13 THE DANGER ELEMENT IS MET."

14 MR. GERAGOS: THAT WAS SOMEBODY THAT WAS CONVICTED
15 OF WITNESS TAMPERING, TWO COUNTS OF WITNESS TAMPERING, AND
16 VIOLATING THE PRE-TRIAL TERMS OF RELEASE, NEITHER OF WHICH WE
17 HAVE REMOTELY HERE. YOU'VE GOT --

18 THE COURT: ONE OF THE CONDITIONS OF PRE-TRIAL
19 RELEASE WAS THAT HE NOT VIOLATE ANY OTHER LAWS. A GUY THAT
20 TAKES THE STAND AND DOESN'T TELL THE TRUTH VIOLATES ANOTHER
21 LAW. YOU, YOURSELF, MR. GERAGOS, SAID AT THE BEGINNING OF
22 YOUR REMARKS -- AND I WROTE IT DOWN ON MY CALENDAR -- YOU SAID
23 "BRAZEN" IN REFERENCE TO KONTOGIANNIS. "BRAZEN" FOR HIM TO
24 COMMIT CRIMES AFTERWARDS, AFTER HE'S BEEN CHARGED. I AGREE
25 WITH YOU. IT WAS. IT OFFENDED ME AT THE TIME. I LEARNED AND

1 HAD DOCUMENTS SUBMITTED TO ME THAT ESTABLISHED, IN MY
2 JUDGMENT, PROBABLE CAUSE TO BELIEVE MR. KONTOGIANNIS WAS
3 COMMITTING CRIMES.

4 AND YOU KNOW WHAT I DID?

5 MR. GERAGOS: I KNOW.

6 THE COURT: I REVOKED HIS BAIL RIGHT AWAY. HE'S IN
7 A HOSPITAL NOW UNDERGOING HEART BYPASS AFTERCARE WITH U.S.
8 MARSHALS GUARDING HIM BECAUSE I DON'T TRUST THAT HE'S NOT
9 GOING TO CONTINUE THIS ILLEGAL CONDUCT.

10 MR. GERAGOS: THERE'S A QUALITATIVE DIFFERENCE
11 BETWEEN THE COURT MAKING THE DETERMINATION THAT YOU DIDN'T
12 BELIEVE A PORTION OF THE TESTIMONY FROM SOMEBODY WHO'S OUT
13 THERE COMMITTING FINANCIAL CRIMES. I DON'T EVEN THINK WE'RE
14 IN THE SAME BALLPARK.

15 FIRST OF ALL, THE COURT WAS NOT THE FACT-FINDER,
16 OBVIOUSLY. THE FACT-FINDER WAS THE JURY. THERE WAS NO
17 FINDING BY THE JURY THAT THEY DISBELIEVED THAT PARTICULAR
18 THING. IN FACT, IF YOU TAKE A LOOK AT ONE OF THE JUROR'S
19 COMMENTS -- MR. HALPERN, I'M SURE, CAN GO ON THE INTERNET AND
20 FIND IT FOR US -- ONE OF THE REPORTS BY THE JURORS SAYS THEY
21 PUT ABSOLUTELY NO CREDENCE INTO THE PROSTITUTION PORTION OF
22 THIS CASE. I BELIEVE IT WAS THE FOREPERSON.

23 SO FOR THE COURT TO NOW SAY "WELL, I'M GOING TO TAKE
24 A PORTION OF THE CASE THAT THE JURY WAS DISMISSIVE OF OR PUT
25 NO CREDENCE IN" --

1 THE COURT: A JUROR --

2 MR. GERAGOS: THE FOREPERSON.

3 THE COURT: THAT UNDERCUTS A LITTLE BIT WHAT I SAID.

4 I TOLD YOU THAT I ACCEPTED THEIR VERDICT ON THE 525,000 BEING
5 A BRIBE, THE 100,000 BEING A BRIBE. MR. WILKES TESTIFIED "NO.
6 IT WAS AN INVESTMENT." WERE I TO CITE THAT AS THE RELEVANT
7 PORTION WHERE HE GAVE FALSE TESTIMONY, IT WOULD BE -- I'M
8 TELLING YOU THAT PERSONALLY AS I SAT AND LISTENED TO HIM, THE
9 WEIGHT OF THE EVIDENCE WAS THE STRONGEST ON WHAT YOU AND THE
10 FOREPERSON MIGHT HAVE THOUGHT WAS A TRIVIAL ASPECT OF THIS,
11 WHICH WAS PAYING FOR PROSTITUTES. WHEN YOU'RE UNDER OATH, A
12 LIE IS A LIE. THERE'S NO SMALL LIES OR BIG LIES.

13 MR. GERAGOS: EXCEPT CAN YOU IMAGINE IF IT HAD BEEN
14 A NOT GUILTY VERDICT OR IF YOU HAD ASKED FOR A SPECIFIC
15 FINDING AND THEY HAD COME BACK AND SAID, "NO, WE DIDN'T FIND
16 ANYTHING ABOUT THE PROSTITUTION"? THE DIFFERENCE BETWEEN
17 GETTING UP AND TESTIFYING AT TRIAL ALWAYS, BY VIRTUE OF BEING
18 A DEFENDANT, IS A RIGGED GAME. WE WERE TALKING ABOUT RIGGED
19 GAMES.

20 HOW DO YOU EVER PUT SOMEBODY ON IN A TRIAL AND THEN
21 SAY, "OKAY. NOW I WANT BAIL ON APPEAL BECAUSE BY VIRTUE OF
22 THE DEFENDANT LOSING, THE DEFENDANT IS GOING TO HAVE TO HAVE
23 LIED BECAUSE THE JURY DID NOT TAKE HIS SET OF CIRCUMSTANCES"?

24 THE COURT: THAT'S NOT THE ONLY CONSIDERATION. I'VE
25 TRIED TO MAKE CLEAR THAT I HAVE OTHER CONSIDERATIONS. I HAVE

1 A FELLOW HERE TODAY WHO STANDS HERE AND SAYS, "I NEVER DID
2 ANYTHING." THAT'S A FELLOW THAT I'M NOT NO SURE IS AMENABLE
3 TO CONDITIONS OF SUPERVISION. AND HE HAS NOT SHOWN HIMSELF TO
4 BE. IT'S NOT JUST WHAT I THINK WAS PERJURY AND OBSTRUCTION OF
5 JUSTICE. I'M VERY UPSET WITH THE AFFIDAVIT. IT WAS
6 MISLEADING. YOU KNOW THAT, AND I KNOW THAT.

7 MR. GERAGOS: THE PROBLEM IS WHO ARE YOU GOING TO
8 LET STAY OUT ON BAIL ON APPEAL, SOMEONE WHO MAINTAINS THEIR
9 INNOCENCE OR SOMEONE WHO SAYS, "YEAH, I'M THE GUY WHO DID IT"?
10 YOU'RE LESS LIKELY OF GETTING IT REVERSED IF YOU'RE UP HERE
11 SAYING, "JUDGE, I DID IT. I'M GOING TO TAKE IT UP ON APPEAL."
12 ON WHAT BASIS?

13 THE COURT: THAT'S ONE OF THE FACTORS I'VE RECITED.

14 MR. GERAGOS: I DON'T THINK THAT THERE IS A
15 SUFFICIENT BASIS UNDER THE GOVERNMENT CASE LAW. WE, I
16 BELIEVE, HAVE SUBSTANTIAL QUESTIONS OF LAW OR FACT. AT THE
17 VERY LEAST, THE LAST ONE THAT THE COURT HAS CITED.

18 THE COURT: THAT'S NOT LIKELY TO RESULT IN A
19 REVERSAL.

20 MR. GERAGOS: IT'S AN IMMUNITY ISSUE. THAT'S A
21 SUBSTANTIAL ISSUE.

22 THE COURT: I MADE FINDINGS ON THAT AT THE TIME.
23 THEY'RE RECITED IN THE GOVERNMENT'S RESPONSE.

24 MR. GERAGOS: THE GRAND JURY LEAKS?

25 THE COURT: WE LISTENED VERY CAREFULLY TO WHETHER

1 THE GOVERNMENT HAD MADE ANY SPECIFIC PROMISES TO TRY TO KEEP
2 SOMEBODY -- OR THREATS, I SHOULD SAY, TO TRY TO KEEP SOMEBODY
3 OFF THE STAND. AND AS IT PLAYED OUT, ONE OF THE TWO WITNESSES
4 YOU WANTED WAS PREPARED TO TESTIFY. AND THEN YOU DECIDED YOU
5 DIDN'T WANT TO CALL HIM. WILLIAMS WAS NOT PREPARED, AND THE
6 GOVERNMENT WAS NOT PREPARED TO GO ANY FURTHER.

7 I DON'T FIND THEY DID THAT TO PREVENT MR. WILKES
8 FROM HAVING A WITNESS. I MADE THAT FINDING AT THE TIME. I'VE
9 REVIEWED IT IN THE TRANSCRIPT AGAIN. IT WAS CORRECT.

10 MR. GERAGOS: IT'S FAIRLY DEBATABLE. I UNDERSTAND
11 THE COURT HAS A DISPUTE. BUT OBVIOUSLY, THE QUESTION IS IS
12 THIS A SUBSTANTIAL ISSUE ON APPEAL? I WOULD ALSO CITE THE
13 COURT TO U.S. VERSUS DOWIE, WHICH IS D-O-W-I-E. AND I'VE GOT
14 A COPY HERE.

15 IF I COULD APPROACH.

16 THE COURT: SURE. YOU MAY PRESENT IT TO THE
17 CLERK.

18 MR. GERAGOS: IT WAS REFERRED TO AS EXHIBITS E AND
19 F.

20 SPECIFICALLY IN THAT CASE, THAT WAS A GENTLEMAN WHO
21 WAS TRIED IN JUDGE SEES (PHONETIC) COURT IN THE CENTRAL
22 DISTRICT AND WAS GIVEN A 42-MONTH SENTENCE. IT WAS A
23 CONSPIRACY TO DEFRAUD THE DEPARTMENT OF WATER & POWER. AND
24 JUDGE SEES GAVE HIM A 42-MONTH SENTENCE. THE THREE
25 SUBSTANTIAL QUESTIONS, IF YOU CAN BELIEVE IT, WAS AN ERRONEOUS

1 ALLOCATION OF THE SENTENCING GUIDELINE, ADMITTING EVIDENCE OF
2 ANOTHER FRAUDULENT SCHEME, AND A DISTRICT COURT SHOULD HAVE
3 ADMITTED EVIDENCE IF HE WAS WILLING TO SUBMIT TO A POLYGRAPH.

4 I WOULD SUGGEST TO THE COURT THOSE ISSUES DON'T EVEN
5 COME INTO THE BALLPARK OF WHAT WE HAVE HERE.

6 THE COURT: I AGREE THAT THE STANDARD IN THIS
7 CIRCUIT IS A VERY DEFERENTIAL ONE. IT'S NOT A HIGH THRESHOLD.
8 THE PROBLEM HERE IS IT WAS GIVEN IN THIS CASE -- AND I JUST
9 LOOKED IT OVER -- THAT THERE WAS AT LEAST A FINDING OR NO
10 CONTRARY FINDING THAT THE DEFENDANT, BY CLEAR AND CONVINCING
11 EVIDENCE, WAS NOT A DANGER.

12 I'M TELLING YOU THAT I'M NOT PREPARED TO MAKE THAT
13 FINDING HERE. I HAVE ABIDING DOUBT ABOUT WHETHER HE'S GOING
14 TO CONTINUE DOWN THE PATH THAT HE'S TAKEN SO FAR.

15 MR. GERAGOS: EXCEPT THAT THE GOVERNMENT HAS WITHIN
16 THE LAST TEN DAYS DISMISSED THE ONLY OTHER ACTION THAT HE HAS.
17 THE ONLY PERIL THAT HE EVER HAS IN HIS ENTIRE LIFE IS WHEN HE
18 GETS MARCHED INTO THIS COURTHOUSE. OTHER THAN THAT, THERE'S
19 NO PROBLEM.

20 THE COURT: I'M NOT TALKING ABOUT THE OTHER CASE.
21 THAT'S NOT A FACTOR IN MY CONSIDERATION BECAUSE YOU'RE RIGHT.
22 THEY HAVE MOVED TO DISMISS IT WITHOUT PREJUDICE. AND I'M
23 PREPARED TO GRANT THAT MOTION.

24 ANYTHING ELSE ON THIS, MR. GERAGOS?

25 MR. GERAGOS: YES. IF THE COURT IS NOT INCLINED,

1 THEN I'D ASK THAT AS SOON I FILE THE MOTION -- THE NOTICE OF
2 APPEAL, THAT THE COURT CAN ALLOW HIM OUT LONG ENOUGH FOR US TO
3 APPEAL TO THE 9TH CIRCUIT FOR RECONSIDERATION, WHICH I BELIEVE
4 IS WHAT'S CALLED FOR UNDER THE RULE.

5 THE COURT: WHAT'S THE GOVERNMENT'S POSITION
6 RESPECTING BAIL PENDING APPEAL?

7 MR. FORGE: YOUR HONOR, OUR POSITION IS SET FORTH
8 ACCURATELY IN THE PAPERS. I THINK AS THE COURT HAS
9 RECOGNIZED, THE STATUTE IS VERY CLEAR. AT THIS STAGE IN THE
10 PROCEEDINGS, IT BASICALLY DOES A 180. THERE IS A VERY, VERY
11 HIGH PRESUMPTION FOR A NUMBER OF GOOD REASONS. THERE'S AN
12 INCREASED INCENTIVE TO FLEE. THE CONFIRMATION THAT THE
13 DEFENDANT IS GUILTY VERSUS A PRESUMPTION OF INNOCENCE. THERE
14 ARE VERY GOOD REASONS WHY THE LEGAL LANDSCAPE CHANGES.

15 HERE, IN ADDITION TO ALL THOSE REASONS, WE HAVE THE
16 CONDUCT YOUR HONOR HAS DESCRIBED HERE TODAY AND IS OUTLINED IN
17 OUR PAPERS. WE THINK ON ACTUALLY BOTH FRONTS, FLIGHT RISK AND
18 ECONOMIC DAMAGE TO THE COMMUNITY, MR. WILKES HAS FAILED TO
19 MEET THAT HIGH BURDEN HERE. WE DO MOVE TO REMAND.

20 THE COURT: THANK YOU, MR. FORGE.

21 I'VE GIVEN THIS A GREAT DEAL OF THOUGHT. I'VE READ
22 THE SUBMISSIONS BY BOTH SIDES. THERE DOES APPEAR TO BE, AS
23 MR. FORGE HAS ALLUDED, SOME LACK OF UNDERSTANDING AS TO THE
24 FEDERAL BAIL LAWS. SOME HAVE SUGGESTED THAT THIS REQUIREMENT
25 IS SOMEHOW PECULIAR TO ME OR THIS COURT. IT'S NOT.

1 JUST AS THERE IS A PRESUMPTION THAT A PERSON PENDING
2 CHARGES AND NOT YET ADJUDICATED GUILTY EITHER BY PLEA OR BY
3 VERDICT IS ENTITLED TO BE OUT FOR A LOT OF SENSIBLE REASONS,
4 TO ASSIST IN HIS DEFENSE, TO CONTINUE TO MAKE MONEY TO PAY FOR
5 THE LAWYER OF HIS CHOOSING, THERE'S A COUNTER PRESUMPTION THAT
6 ONCE A JURY HAS FOUND BEYOND A REASONABLE DOUBT THAT CRIMINAL
7 CHARGES ARE TRUE, THAT THE PERSON SHOULD BE DETAINED. WE
8 LAWYERS KNOW HOW TO CONSTRUCT STATUTES. THIS ONE SPEAKS IN
9 MANDATORY LANGUAGE.

10 18 USC 3143(B) REQUIRES -- AND WHEN I SAY
11 "REQUIRES," IT SAYS, "THE JUDICIAL OFFICER SHALL ORDER."
12 "SHALL" IS A MANDATORY TERM UNDER FAMILIAR CANONS OF
13 CONSTRUCTION. "SHALL ORDER DETENTION OF A PERSON FOUND GUILTY
14 AND SENTENCED TO A TERM OF IMPRISONMENT UNLESS CERTAIN
15 EXCEPTIONS ARE MET."

16 SO IT'S FAR FROM THIS BEING SOME KIND OF PECULIARITY
17 ASSOCIATED WITH THIS COURT. IT IS THE LAW OF THE UNITED
18 STATES. THERE'S A PRESUMPTION IN FAVOR OF DETENTION UNLESS
19 THE DEFENDANT CAN SHOW ESSENTIALLY THE CIRCUMSTANCES EXIST
20 THAT WOULD REBUT OR OFFSET THE PRESUMPTION. AND THE SHOWING
21 MUST BE BY CLEAR AND CONVINCING EVIDENCE. NOT JUST
22 PREPONDERANCE, BUT CLEAR AND CONVINCING.

23 WHAT THAT MEANS, ACCORDING TO THE 9TH CIRCUIT MODEL
24 CIVIL INSTRUCTION, IS THAT I HAVE TO BE PERSUADED THAT IT'S
25 HIGHLY LIKELY THAT A DEFENDANT WILL NOT POSE A DANGER OR A

1 FLIGHT RISK. IT'S A HIGHER STANDARD THAN MORE LIKELY THAN
2 NOT.

3 SO BEGINNING WITH THE PRESUMPTION IN FAVOR OF
4 DETENTION, I LOOK TO THE EXCEPTIONS. I ASK MYSELF AM I
5 CLEARLY -- IS THERE CLEAR AND CONVINCING EVIDENCE THAT
6 MR. WILKES WON'T FLEE OR POSE A DANGER TO THE COMMUNITY AND DO
7 I FIND THAT THE APPEAL IS NOT FOR PURPOSES OF DELAY AND RAISES
8 SUBSTANTIAL ISSUES OF LAW OR FACT LIKELY TO RESULT IN
9 REVERSAL?

10 MR. GERAGOS, I AGREE WITH YOU. HE'S HERE TODAY,
11 WHICH IS THE BEST PROOF KNOWING THAT HE FACED A SUBSTANTIAL
12 SENTENCE AND THAT I WAS DISINCLINED TO GRANT BAIL PENDING
13 APPEAL THAT HE'S GOING TO FLEE. HE'S BEEN TO OTHER PLACES IN
14 THE WORLD. BUT UNLIKE SOME DEFENDANTS, MR. KONTOGIANNIS, FOR
15 EXAMPLE, WHO I THINK HAS DUAL CITIZENSHIP IN GREECE,
16 MR. WILKES POSES NO SUCH THREAT. I'M PREPARED TO MAKE A
17 FINDING BY CLEAR AND CONVINCING EVIDENCE THAT HE'S NOT A
18 FLIGHT RISK.

19 WHERE HE FALLS DOWN UNDER THE STANDARD IS THE OTHER
20 SECTION, WHICH IS THAT HE'S NOT A DANGER. AS I MENTIONED,
21 UNDER (A), THE TERM "DANGER" ENCOMPASSES ECONOMIC DANGER. THE
22 COURT RELIES ON THE REYNOLDS CASE FOR THAT PROPOSITION. IT'S
23 GOOD LAW. "WHERE RELEASE OF A DEFENDANT WOULD POSE A RISK OF
24 ECONOMIC OR PECUNIARY HARM TO THE COMMUNITY, THE DANGER
25 ELEMENT IS MET."

COMPUTER-AIDED TRANSCRIPTION

1 IN THIS CASE AND WITH REGARD TO MR. WILKES, I CANNOT
2 MAKE THE REQUIRED FINDING BY CLEAR AND CONVINCING EVIDENCE
3 THAT HE IS NOT AN ECONOMIC DANGER TO THE COMMUNITY. LET ME
4 EXPLAIN WHY.

5 FIRST, I NOTE THAT THE OFFENSES OF CONVICTION, THE
6 13 CRIMES THAT HE STANDS CONVICTED OF, THEY WERE MOSTLY
7 ECONOMIC IN NATURE. THEY INVOLVED BRIBERY. THEY INVOLVED
8 MONEY-LAUNDERING. THEY INVOLVED WIRE FRAUD. SIGNIFICANT TO
9 MY ANALYSIS OF WHETHER THE DEFENDANT POSES AN ONGOING THREAT
10 OF ECONOMIC HARM IS THAT THESE CRIMES, AS FOUND BY THE JURY,
11 WERE ONGOING AND CONTINUOUS IN NATURE. AS I'VE MENTIONED IN
12 THE SENTENCING PHASE AND AS FOUND BY THE JURY, THE CRIME SPREE
13 SPANNED OVER NINE YEARS.

14 ADDITIONALLY, I FIND THAT THE CRIMES WERE
15 SOPHISTICATED. THEY INVOLVED GREAT STEALTH AND GUILE ON THE
16 DEFENDANT'S PART. THEY INCLUDED ATTEMPTS TO DISGUISE AND
17 COVER UP. SOME OF THE CRIMINAL ACTIVITY WAS ACCOMPLISHED BY
18 SOPHISTICATED MEANS, AS I'VE ALREADY FOUND. AS AN EXAMPLE,
19 I'VE POINTED AGAIN TO THE MULTIPLE LAYERS OF MONEY-LAUNDERING
20 THAT WERE USED TO DISGUISE THE PAYOFFS TO FORMER CONGRESSMAN
21 CUNNINGHAM'S MORTGAGES.

22 THROUGHOUT HIS PERPETRATION OF THE CRIMES,
23 MR. WILKES HAS DEMONSTRATED THE ABILITY, AS I SAID, TO BE
24 SHREWD AND CRAFTY AND DEVIOUS. AND HE HAS EXERTED SUBSTANTIAL
25 CONTROL OVER OTHERS. IF I LOOKED SIMPLY TO CONGRESSMAN

1 CUNNINGHAM AND MR. COMBS, THAT IS TRUE. I'M REMINDED HERE
2 AGAIN OF HOW THOROUGHLY ADEPT AND MANIPULATIVE MR. WILKES WAS
3 IN PRESSING HIS AGENDA WITH CONGRESSMAN CUNNINGHAM. I
4 MENTIONED THAT IN THE SENTENCING.

5 ADDITIONALLY, I HAVE DOUBTS ABOUT MR. WILKES'S
6 TRUSTWORTHINESS AND, IN TURN, HIS ABILITY TO FOLLOW ANY
7 CONDITIONS OF RELEASE THAT I MIGHT SET. HE EXERCISED HIS
8 RIGHT TO TESTIFY AT TRIAL. BUT IN MY VIEW AND THAT OF THE
9 JURY, HE DIDN'T TESTIFY TRUTHFULLY. WE'VE GONE OVER THIS
10 ALREADY. THERE ARE NUMEROUS EXAMPLES THAT BEAR OUT THE
11 CONCLUSION. NOT JUST THE TESTIMONY ABOUT THE PROSTITUTES, BUT
12 THE NATURE OF THE MONEY TRANSFERS AND WHAT THEY REPRESENTED.

13 ALL OF THAT WAS CONTRADICTED BY THE GREAT WEIGHT OF
14 THE EVIDENCE. AND I FIND THAT IT WAS FALSE TESTIMONY GIVEN BY
15 MR. WILKES. THAT ITSELF WOULD JUSTIFY, I THINK, IN THIS CASE
16 DENYING BAIL PENDING APPEAL. THERE'S A NEW CRIME COMMITTED
17 WHILE ON BOND. YOU'VE ASKED EACH DEFENDANT THEN RISKS THAT
18 RIGHT. I'VE TOLD YOU BEFORE I DON'T MAKE THAT FINDING IN
19 EVERY CASE, AND CERTAINLY NOT EVERY CASE WHERE THE DEFENDANT
20 TESTIFIES. IN THIS CASE, HE ROLLED THE DICE. AND HE FALSELY
21 TESTIFIED. NOW HE'S ASKING ME TO IGNORE THAT, THAT THAT WAS
22 RISK-FREE. IT'S NOT.

23 HIS WILLINGNESS TO GIVE FALSE TESTIMONY ON A MATTER
24 OF CONSEQUENCE AT TRIAL RENDERS HIM UNTRUSTWORTHY IN MY
25 JUDGMENT AND CONVINCES ME THAT HE WILL NOT ADHERE TO THE

1 CONDITIONS OF SUPERVISION IF HE'S RELEASED ON BOND PENDING
2 APPEAL.

3 THE FINDING IS ALSO BUTTRESSED BY MY CONCLUSION THAT
4 AT A MINIMUM MR. WILKES HAS MISLED THE COURT IN RELATION TO
5 HIS FINANCIAL SITUATION. ON JULY 30TH LAST YEAR, I APPOINTED
6 COUNSEL TO REPRESENT HIM IN THE WILKES/FOGGO CASE. I LATER
7 EXPANDED THAT APPOINTMENT TO INCLUDE REPRESENTATION ON ASPECTS
8 OF THIS VERY CASE. I MADE THE DECISION TO APPOINT COUNSEL
9 AFTER REVIEWING THE FINANCIAL AFFIDAVIT THAT MR. WILKES FILED
10 STATING, IN ESSENCE, THAT HE HAD NO AVAILABLE ASSETS.

11 THE GOVERNMENT OBJECTED AT THE TIME TO MY FINDING.
12 AND THEY ARGUED THAT BASED ON THEIR INVESTIGATION, THAT HE DID
13 HAVE ASSETS. HE COULD HIRE HIS OWN LAWYER. ALTHOUGH I
14 OVERRULED THE OBJECTION AT THE TIME, I RESERVED FOR THE
15 GOVERNMENT THE RIGHT TO PRESENT ANY INFORMATION THEY MIGHT
16 COME ACROSS OR HAD IN THEIR POSSESSION WHICH CONTRADICTED THE
17 FINDING THAT THE DEFENDANT WAS IMPECUNIOUS.

18 THE GOVERNMENT HAS SINCE LODGED WITH ME A
19 FINANCIAL AFFIDAVIT -- FINANCIAL RECORDS, I SHOULD SAY, AS HAS
20 MR. WILKES. I'VE CAREFULLY STUDIED THE FINANCIAL AFFIDAVIT
21 THAT MR. WILKES ORIGINALLY FILED WITH ME, AND I'VE COMPARED IT
22 TO INFORMATION THAT IS INCLUDED IN THE FINANCIAL RECORDS I'VE
23 RECENTLY RECEIVED.

24 FROM THAT COMPARISON, I'VE DETERMINED THAT CONTRARY
25 TO THE REPRESENTATIONS IN THE FINANCIAL AFFIDAVIT, MR. WILKES

1 NOW HAS AND HE HAS HAD THE ABILITY TO PAY FOR HIS OWN LEGAL
2 COUNSEL. MUCH OF THE MATERIAL REMAINS UNDER SEAL. SO TO
3 PROTECT MR. WILKES'S PRIVACY, I'LL SPEAK IN BROAD STROKES
4 ABOUT THIS AS I HAVE SO FAR.

5 WHAT THE RECORDS SHOW IS THAT WITHIN MONTHS OF
6 TELLING ME THAT HE DIDN'T HAVE FUNDS TO RETAIN A LAWYER TO
7 REPRESENT HIM, HE MADE OR AUTHORIZED SUBSTANTIAL PAYMENTS
8 TOTALING AT LEAST \$90,000 TO TWO OTHER LAWYERS HE HAS ON
9 RETAINER.

10 IN ADDITION, DURING THE PERIOD OF TIME, HE RECEIVED
11 PAYOUTS HIMSELF OF UP TO \$65,000 A MONTH.

12 FINALLY, THERE IS A NUMBER OF THEN EXISTING ASSETS
13 WHICH WERE LATER AWARDED TO HIM IN HIS DIVORCE SETTLEMENT.
14 THEY APPEAR NOWHERE ON THE AFFIDAVIT. VEHICLES, BOATS, ALL OF
15 THAT. AND THE AFFIDAVIT SPECIFICALLY CALLS FOR THAT. IT
16 SPECIFICALLY CALLS FOR SUCH INFORMATION. IT'S NOT THERE, AND
17 NO EXPLANATION HAS BEEN OFFERED.

18 IT'S BEEN EXPLAINED BY WAY OF MITIGATION THAT THESE
19 FUNDS WERE SUBJECT TO THE APPROVAL AND THE JURISDICTION OF THE
20 SUPERIOR COURT WHEN MR. WILKES'S DIVORCE CASE WAS PENDING.
21 WITH ALL RESPECT, I FIND THAT TO BE BESIDE THE POINT. THE
22 REAL POINT HERE IS THAT THE DEFENDANT, WITH THE APPROVAL OF
23 THE SUPERIOR COURT, ENJOYED ACCESS TO THE FUNDS.

24 IN FACT, AT ONE POINT SHORTLY AFTER BY APPOINTED
25 COUNSEL, THE SUPERIOR COURT AUTHORIZED ABOUT A MILLION AND A

COMPUTER-AIDED TRANSCRIPTION

1 HALF GOING TO HIS LAWYER'S TRUST ACCOUNT. AND FROM WHAT I CAN
2 GATHER FROM LOOKING AT THE RECORDS, IT WAS MR. WILKES'S
3 REQUEST OF THE LAWYER THAT TRIGGERED THE DISSEMINATION OF
4 THOSE FUNDS TO HIM. AND THE LAWYER'S RECORDS BEAR THAT OUT AS
5 WELL.

6 SO IT'S APPARENT TO ME FROM REVIEWING THE RECORD AND
7 THE DIVORCE LAWYER'S DECLARATION THAT SUBSTANTIAL AMOUNTS OF
8 MONEY WERE DISBURSED TO MR. WILKES AS HE SAW FIT.

9 I THINK YOU'VE HEARD THIS TERM BEFORE, MR. WILKES:
10 "CHUTZPAH." IT MEANS UNBELIEVABLE, GALL, OR AUDACITY. AND
11 WHEN ONE IS CHARGED WITH SERIAL CRIMES INVOLVING FRAUD AND
12 DISHONESTY AND BRIBERY, I THINK IT TAKES INCREDIBLE CHUTZPAH
13 TO COMPOUND THOSE WRONGS BY MATERIALLY MISREPRESENTING ONE'S
14 FINANCIAL CONDITION. I FIND THAT'S WHAT HAPPENED HERE.

15 I CONCLUDE THAT THE DEFENDANT'S CONTINUING
16 WILLINGNESS TO ENGAGE IN A PATTERN OF DECEITFUL CONDUCT,
17 INCLUDING GIVING FALSE TESTIMONY AT TRIAL AND PROVIDING
18 MISLEADING FINANCIAL INFORMATION TO THE COURT, STRONGLY
19 SUGGESTS -- CONTRARY TO THE FINDING THAT I HAVE TO MAKE,
20 STRONGLY SUGGESTS THAT HE WILL POSE AN ECONOMIC DANGER TO THE
21 COMMUNITY AND TO OTHERS. CERTAINLY, I CAN MAKE NO CONTRARY
22 FINDING BY CLEAR AND CONVINCING EVIDENCE. AND NO CONTRARY
23 FUNDING IS WARRANTED GIVEN HIS RECORD.

24 LIKEWISE, AS I SAID, I FIND BASED ON THAT THAT
25 MR. WILKES IS LIKELY TO CONTINUE DOWN THE SAME PATH AND,

1 THEREFORE, WILL BE NOT AMENABLE TO ANY CONDITIONS THAT HE MAY
2 REGARD AS INCONVENIENT OR NOT CONSISTENT WITH HIS OWN AGENDA.

3 NOW, I'VE BEEN ASKED BY THE GOVERNMENT TO MAKE
4 SEPARATE AND ALTERNATIVE FINDINGS UNDER THE LIKELIHOOD OF
5 SUCCESS ON APPEAL. I DECLINE TO DO THAT. I FIND THAT IT IS A
6 VERY DEFERENTIAL STANDARD, AS MR. GERAGOS HAS STAKED OUT.

7 LET ME TELL YOU THIS, MR. GERAGOS, TO BE COMPLETE IN
8 THIS RECORD: I UNDERSTAND THE FAIRLY DEBATABALE STANDARD. I
9 LOOKED AT HANDY AGAIN AND THE CASE THAT FOLLOWED IT. BUT THE
10 PROPOSITION THAT IT'S FAIRLY DEBATABALE THAT HE WAS FORCED TO
11 TRIAL OR RUSHED TO TRIAL, I DON'T THINK SO. I DON'T THINK
12 THREE SMARTER PEOPLE ON THE APPELLATE COURT ARE GOING TO AGREE
13 WITH THAT WHEN THEY LOOK AT THIS WHOLE RECORD AND APPLY THE
14 STANDARDS THAT THEY'VE GIVEN.

15 LIKEWISE, I DON'T FIND IT FAIRLY DEBATABALE OR FAIRLY
16 DOUBTFUL THAT THE GOVERNMENT CROSSED THE LINE IN CLOSING
17 ARGUMENT AND SAID THINGS THAT HAD THE EFFECT OF PREJUDICING
18 MR. WILKES'S ABILITY TO GET A FAIR TRIAL. I'VE LOOKED BACK AT
19 THE PRE-TRIAL MOTIONS THAT YOU RAISED, SPECIFICALLY THE GRAND
20 JURY MOTION. WHAT HAPPENED WAS WRONG. THE GRAND JURY
21 INFORMATION WAS LEAKED. THE GOVERNMENT HAS CONCEDED THAT.
22 BUT THAT'S NOT THE END OF THE INQUIRY. THE INQUIRY IS WHAT
23 EFFECT, IF ANY, DID IT HAVE ON MR. WILKES'S ABILITY TO GET A
24 FAIR TRIAL? IT HAD NONE. WE CAREFULLY SCREENED FROM A HUGE
25 POOL OF PROSPECTIVE JURORS.

COMPUTER-AIDED TRANSCRIPTION

1 MR. GERAGOS: EXCEPT THAT ARGUMENT DOES NOT TAKE
2 INTO ACCOUNT THE INSTRUCTIONAL ISSUE, AND I DON'T WANT TO
3 BELABOR THAT.

4 THE COURT: I'M HAPPY TO TALK ABOUT THAT, TOO. THIS
5 IS NOT THE SAME IMPANELMENT THAT HAS BEEN THE SUBJECT OF MANY,
6 MANY MOTIONS. I THINK YOU HAD TO STRAIN TO FIND SOMETHING
7 WRONG WITH THE GRAND JURY CHARGE, WHICH I GAVE IN THIS CASE.
8 I'M NOT DEFENSIVE ABOUT IT, BUT IT WAS FULLY CONSISTENT WITH
9 THE GUIDELINES FROM NAVARRO-VARGAS. FULLY CONSISTENT.

10 THE IDEA THAT THE 9TH CIRCUIT IS GOING TO SAY
11 THERE'S A PIMPLE ON THIS GRAND JURY CHARGE AFTER HE'S HAD A
12 FAIR TRIAL BY AN IMPARTIAL JURY WHO -- BY THE WAY, ON THE
13 MATTER OF INSTRUCTIONS, WE HAVE A REMARKABLE DEGREE OF
14 AGREEMENT ON THE JURY INSTRUCTIONS. I DON'T THINK THERE WERE
15 ANY OBJECTIONS AT THE END OF THE DAY. I THINK ALL
16 INSTRUCTIONS GIVEN TO THE TRIAL JURY WERE AGREED TO BY YOU AND
17 MR. CAHN. I ACCOMMODATED THE ISSUES THAT YOU RAISED BY GIVING
18 THOSE.

19 USUALLY, INSTRUCTIONAL ERROR IS A BIG DEAL ON
20 APPEAL. IT'S ABSENT HERE. WE DON'T HAVE ANY OBJECTIONS TO
21 THE INSTRUCTIONS. SO WHAT WE HAVE WITH RESPECT TO THIS JURY
22 IS ONE THAT YOU PARTICIPATED IN SELECTING ALONG WITH
23 MR. WILKES. THEY WERE PRE-SCREENED. THEY WERE FAIR --
24 EXCEEDINGLY FAIR, AND THEY WERE PROPERLY INSTRUCTED.

25 NOW, ALL OF THAT, IN MY JUDGMENT, PURGES ANY TAINT

COMPUTER-AIDED TRANSCRIPTION

1 THAT MIGHT HAVE OCCURRED BEFORE, INCLUDING GRAND JURY LEAKING
2 OR IF YOU SAY THERE WAS A MISSTATEMENT -- I DON'T FIND THAT
3 THERE WAS ANY IN THE GRAND JURY CHARGE -- IT PURGES THE TAINT
4 OF THAT. YOU'LL HAVE TO SHOW PREJUDICE TO THE 9TH CIRCUIT,
5 AND I DON'T THINK YOU CAN UNDER THE CIRCUMSTANCES.

6 NOTWITHSTANDING THAT, I APPRECIATE THE DIFFICULTY OF
7 BEING THE REVIEWER OF MY OWN JUDGMENTS. THEY DON'T WANT TO
8 PUT ME IN THAT POSITION. I DON'T MAKE ANY FINDING ON THAT.
9 BUT I'M NOT PREPARED TO MAKE A FINDING THAT THERE'S A
10 SUBSTANTIAL LIKELIHOOD OF REVERSAL IN THIS CASE. MR. WILKES
11 GOT A FAIR TRIAL HERE. AS THE GOVERNMENT SAID AND I'VE
12 ALLUDED TO HERE, I'VE BENT OVER BACKWARDS TO ENSURE A FAIR
13 PROCESS FOR HIM. AND I THINK HE GOT THAT AT THE END OF THE
14 DAY.

15 THIS VERDICT IS THE RESULT OF THE EVIDENCE AND AN
16 OBJECTIVE AND FAIR ANALYSIS OF THE EVIDENCE, NOT OTHER
17 EXTRANEous FACTORS.

18 MR. GERAGOS: JUST SO THE RECORD'S CLEAR, THE
19 COURT'S NOT MAKING THE FINDING ONE WAY OR THE OTHER?

20 THE COURT: NO, I'M NOT MAKING A FINDING. I THINK I
21 HAVE TO FIND AFFIRMATIVELY THAT HE HAS A FAIR CHANCE OF
22 REVERSAL ON APPEAL UNDER THE FAIRLY DEBATABLE STANDARD. I
23 DON'T MAKE THAT FINDING HERE. I, LIKEWISE, DO NOT MAKE A
24 FINDING BY CLEAR AND CONVINCING EVIDENCE THAT HE POSES NO
25 ECONOMIC DANGER TO THE COMMUNITY. I THINK HE DOES.

1 SO THE MOTION FOR BAIL PENDING APPEAL IS DENIED.

2 MR. WILKES IS ORDERED REMANDED ON THIS CASE TO BEGIN SERVING
3 THE SENTENCE IMPOSED BY THE COURT.

4 MR. GERAGOS: I'VE GOT THE NOTICE OF APPEAL.

5 DOES THE COURT --

6 THE COURT: YOU'LL HAVE TO GET THE STAY FROM THEM.
7 I FOLLOW THE LETTER OF THE INSTRUCTION HERE. THE MOTION FOR
8 STAY IS DENIED. I HAVE A WRITTEN ORDER ON MY FINDINGS
9 RESPECTING BAIL PENDING APPEAL, WHICH I'LL SIGN. YOU SHOULD
10 HAVE A COPY OF IT.

11 MR. GERAGOS: 9-1.2(E), THE COURT IS NOT INCLINED TO
12 FOLLOW THE BAIL AT THE TIME THE MOTION WAS FILED IN THIS
13 COURT, THAT THE BAIL WILL REMAIN IN EFFECT UNTIL THE COURT
14 RULES ON THE MOTION?

15 THE COURT: NO, I'M NOT INCLINED TO FOLLOW THAT. AS
16 I SAID, I FIND REASON HERE TO REVOKE BAIL. INDEPENDENT OF THE
17 FACT THAT HE'S BEEN ON BAIL, HE'S VIOLATED THE TRUST OF THE
18 COURT IN SUBMITTING WHAT I FIND TO BE VERY MISLEADING
19 INFORMATION TO ME. HE'S COMMITTED A NEW OFFENSE WHILE ON
20 BOND.

21 SO INDEPENDENT OF LEAVING HIM ON, I WOULD REVOKE
22 BAIL FOR THOSE REASONS. YOU'LL HAVE TO GET HIM A STAY FROM
23 THE COURT OF APPEALS. THE ORDER HAS BEEN SIGNED.

24 THERE IS ANOTHER MATTER PENDING THAT MR. WILKES
25 NEEDS TO BE HERE FOR. SO HOLD THE LINE.

1 MR. WILKES AND MR. GERAGOS, YOU, AS YOU KNOW, HAVE A
2 RIGHT TO APPEAL THE JUDGMENT AND SENTENCE OF THE COURT. YOUR
3 NOTICE OF APPEAL HAS TO BE FILED WITHIN TEN DAYS. IT NEEDS TO
4 BE FILED IN THIS COURT. MR. GERAGOS WILL ASSIST YOU IN FILING
5 THAT. OR IF YOU NEED HELP FROM THE CLERK OF THE COURT, SHE'LL
6 HELP YOU.

7 DO YOU UNDERSTAND YOUR RIGHT TO APPEAL THE JUDGMENT
8 OF THE VERDICT AND THE SENTENCE OF THE COURT?

9 THE DEFENDANT: YES.

10 THE COURT: ANYTHING ELSE ON THIS MATTER?

11 MR. FORGE: NO.

12 MR. GERAGOS: NOT FROM THE DEFENDANT.

13 THE COURT: TISH, IF YOU'LL CALL THE RELATED CASE.

14 MR. GERAGOS, I'LL HAND YOU BACK THESE MATERIALS.

15 --000--

16 THE CLERK: CALLING NO. 1 ON THE CALENDAR, 07CR239,
17 UNITED STATES OF AMERICA VERSUS KYLE DUSTIN FOGGO AND BRENT
18 ROGER WILKES.

19 MAY WE HAVE THE APPEARANCES, PLEASE.

20 MR. FORGE: JASON FORGE, SANJAY BHANDARI, PHIL
21 HALPERN, AND VALERIE CHU FOR THE UNITED STATES.

22 THE COURT: GOOD AFTERNOON ONCE AGAIN.

23 MR. CAHN: REUBEN CAHN AND SHEREEN CHARLICK FOR
24 MR. WILKES.

25 THE COURT: DO WE HAVE COUNSEL FOR MR. FOGGO ON?

1 MR. TESLIK: WE DO. IT'S RANDOLPH TESLIK, ANDREW
2 DOBER, AND LIZ TOBIO FOR MR. FOGGO.

3 THE COURT: THANK YOU FOR BEING PATIENT.

4 I HAVE BEFORE ME A MOTION TO DISMISS, WHICH IS IN
5 THE WILKES/FOGGO MATTER. IT'S UNOPPOSED EXCEPT THAT COUNSEL
6 FOR MR. WILKES BELIEVES THAT THE DISMISSAL SHOULD BE WITH
7 PREJUDICE RATHER THAN WITHOUT.

8 I'M HAPPY TO HEAR FROM YOU, MR. CAHN.

9 MR. CAHN: LET ME REMIND THE COURT OF THE
10 CIRCUMSTANCES. FOR A LONG TIME, WE'VE HAD A MOTION PENDING TO
11 TRANSFER THIS CASE. THE GOVERNMENT OPPOSED IT VEHEMENTLY AT
12 ALL TIMES. QUITE RECENTLY, IN FACT, MR. WILKES AT LAST AGREED
13 TO A MOTION TO TRANSFER. MR. FOGGO AMENDED HIS MOTION TO MOVE
14 TO TRANSFER NOT TO THE EASTERN DISTRICT OF VIRGINIA, BUT TO
15 THE DISTRICT OF COLUMBIA. MR. WILKES WITHDREW HIS OBJECTION
16 AND AGREED TO THE TRANSFER.

17 THE COURT: RIGHT.

18 MR. CAHN: THE CIRCUMSTANCES ARE NOW SUDDENLY THE
19 GOVERNMENT SEEKS A TRANSFER TO A DISTRICT TO WHICH NO
20 DEFENDANT HAS A MOTION PENDING. AND THEY DISMISSED
21 MR. WILKES'S CASE WITH THE CLEAR INTENTION OF REINDICTING HIM
22 IN A DISTRICT WHICH HE HASN'T CONSENTED TO TRANSFER.

23 THE GOVERNMENT SAYS THAT I SUGGESTED THIS TO THEM.
24 I SUGGESTED IT WAS AN APPROPRIATE WAY IN WHICH THEY COULD
25 CONSOLIDATE CASES THAT WEREN'T OTHERWISE CONSOLIDATABLE. I

1 NEVER SUGGESTED THAT THE GOVERNMENT HAD THE RIGHT TO FORUM
2 SHOP. INDEED, THE RULE IS SPECIFICALLY DESIGNED TO PREVENT
3 THAT. THE GOVERNMENT HAS NO RIGHT TO MOVE THE CASE. THAT
4 RIGHT IS GIVEN SOLELY TO THE DEFENDANT.

5 AT THIS POINT WHAT WE HAVE IS THE GOVERNMENT USING
6 ITS POWER TO MANIPULATE THE SYSTEM TO TAKE MR. WILKES TO A
7 DISTRICT HE DOESN'T BELONG IN, TO WHICH HE HASN'T BEEN
8 SENTENCED, AND THAT'S THE EASTERN DISTRICT OF VIRGINIA. IN
9 ADDITION TO THAT, THERE'S PRACTICAL CONCERNS THAT THE COURT
10 SHOULD CONSIDER.

11 ONE IS THAT THE EASTERN DISTRICT OF VIRGINIA IS NOT
12 A PUNITARY DISTRICT. IT'S NOT ONLY ALEXANDRIA. I DON'T
13 BELIEVE THE COURT, BASED ON MY READING OF THE RULE, HAS THE
14 POWER TO SPECIFY THE PARTICULAR LOCATION WITHIN A DISTRICT.
15 IT INCLUDES NORFOLK, AND IT INCLUDES RICHMOND, ALL OF WHICH
16 WOULD BE EXTRAORDINARILY INCONVENIENT.

17 THE COURT: IF I GRANT THAT MOTION, MY INCLINATION,
18 MR. CAHN, WOULD BE TO LEAVE IT TO THE CHIEF JUDGE IN THE
19 EASTERN DISTRICT AND DETERMINE WHAT DIVISION THE CASE IS
20 ASSIGNED TO. YOU'RE RIGHT. THAT'S NONE OF MY BUSINESS.

21 MR. CAHN: I UNDERSTAND THAT. BUT MY POINT IS THE
22 GOVERNMENT'S MOTION IS NOT WELL-TAKEN AS FAR AS TRANSFERRING
23 THIS CASE TO THE EASTERN DISTRICT OF VIRGINIA WHEN THERE'S NO
24 PENDING MOTION. AND PARTICULARLY FROM MR. WILKES'S POINT OF
25 VIEW, OUR OBJECTION IS TO DISMISS IT WITHOUT PREJUDICE. IF

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1 THEY WISH TO DISMISS HIM, IT SHOULD BE WITH PREJUDICE. IF
2 THEY WISH TO DISMISS HIM WITHOUT PREJUDICE IN ORDER TO GAIN A
3 TACTICAL ADVANTAGE AND GET HIM IN A DISTRICT THAT HE DOESN'T
4 BELONG IN, THAT'S NOT A PROPER PURPOSE FOR DISMISSAL.

5 THE COURT: I AGREE WITH YOU. FIRST OF ALL, I'VE
6 GOT TO TELL YOU I'M NOT ABSOLUTELY CONVINCED HE'S GOING TO BE
7 REINDICTED. HE'S JUST BEEN SENTENCED TO 12 YEARS. AND IF THE
8 GOVERNMENT FEELS THAT THIS IS A DEFENSIBLE SENTENCE, THEN I
9 DON'T KNOW. I'M NOT MAKING A FINDING THAT HE'S NOT, BUT I
10 DON'T HAVE ENOUGH INFORMATION TO SAY FOR SURE HE'S ABOUT TO BE
11 REINDICTED.

12 MR. CAHN: WE HAVE THE PEOPLE HERE THAT CAN SPEAK TO
13 THAT MATTER. THEY'VE CHOSEN NOT TO DISAVOW MY STATEMENT. IF
14 THEY WANT TO SPEAK TO IT, LET THEM DO SO. IF THEY DON'T CARE
15 TO DENY IT, THEN I THINK MY CLAIM IS WELL-TAKEN.

16 THE COURT: MR. FORGE, WHO SPEAKS FOR THE UNITED
17 STATES ON THIS CASE?

18 MR. FORGE: I'LL SPEAK SO THE GENTLEMEN ON THE LINE
19 CAN HEAR US.

20 I'M NOT GOING TO TAKE MR. CAHN'S BAIT. IT SMACKS OF
21 A CIVIL LAWYER WHO FAXES A LETTER AT 4:55 P.M. AND SAYS, "IF I
22 DON'T HEAR FROM YOU TO THE CONTRARY BY 5:00 P.M., I'LL ACCEPT
23 THAT YOU'VE CONCEDED TO THE POINTS I'VE RAISED IN THIS
24 LETTER."

25 YOUR HONOR IS CORRECT, AND WE ALL KNOW THAT THE

1 DECISION ON WHETHER OR NOT TO REINDICT MR. WILKES WILL WAIT
2 FOR ANOTHER DAY. OBVIOUSLY, THIS IS A VERY SIGNIFICANT EVENT.

3 THE COURT: IT'S NOT CLEAR THAT HE'S GOING TO BE
4 REINDICTED. THIS ISN'T STEP 1.

5 MR. FORGE: THAT'S CORRECT. THAT DIE IS NOT CAST.

6 BUT MORE IMPORTANTLY, TO THE SUBSTANCE OF THE ISSUE,
7 MR. CAHN IS JUST WRONG ON THE LAW. THE REALITY IS MR. WILKES
8 COULD HAVE BEEN INDICTED ON DAY ONE IN THE EASTERN DISTRICT OF
9 VIRGINIA. HE HAD ABSOLUTELY NO RIGHT NOT TO BE INDICTED IN
10 THE EASTERN DISTRICT OF VIRGINIA. WITH THE 6TH AMENDMENT
11 HOLDS, A DEFENDANT HAS A RIGHT TO BE INDICTED IN THE DISTRICT
12 IN WHICH THE CRIMES OCCURRED.

13 THE COURT: YOU GUYS CHOSE THIS VENUE. I DIDN'T
14 UNDERSTAND IT AT THE TIME. YOU'LL REMEMBER AT THE INCEPTION
15 OF THIS CASE, ONE OF THE FIRST QUESTIONS I PUT TO THE UNITED
16 STATES WAS "WHAT'S THE CONNECTION BETWEEN THESE TWO THINGS?"
17 WHICH IS ANOTHER WAY OF SAYING "WHY IS THIS CASE HERE?"

18 MR. FORGE: I UNDERSTAND. YOU'RE RIGHT. YOU DID
19 SAY THAT REPEATEDLY. AND THE REALITY IS, AS I'M SURE YOUR
20 HONOR CAN APPRECIATE, WE ARE LOCATED HERE, AND MOST OF THE
21 AGENTS ARE LOCATED HERE.

22 THE COURT: ARE YOU SURE ABOUT THAT? BECAUSE
23 MR. MAC DOUGALL AND MR. FOGGO TAKE A VERY DIFFERENT POSITION
24 TO WHERE MOST OF EVEN THE AGENTS ARE LOCATED. THEY SAY MOST
25 OF THE AGENTS ARE LOCATED THERE. THEY'VE DONE ACCOUNTING

1 BASED ON INFORMATION IN THE DISCOVERY SO FAR. NOT JUST LAY
2 WITNESSES, BUT AGENTS.

3 MR. FORGE: IF IT'S CONTRARY TO THAT, I WOULD TAKE
4 ISSUE TO THAT. I KNOW FOR CERTAIN THAT THE MAJORITY OF THE
5 AGENTS ARE HERE. THE INVESTIGATING PROSECUTORS ARE LOCATED
6 HERE. AND THE CASE WAS PROPERLY BROUGHT HERE. I FULLY
7 RECOGNIZE YOUR CONCERNS AND THE CONCERNS MR. FOGGO HAS RAISED
8 REGARDING HIS CONVENIENCE. I'M NOT DISCOUNTING THOSE. I'M
9 SIMPLY SAYING THAT FROM OUR PERSPECTIVE, IT WAS MORE
10 CONVENIENT FOR IT TO BE HERE. THAT'S ENTIRELY APPROPRIATE.

11 THE COURT: IT'S A DIFFERENT ISSUE ANYWAY NOW WITH
12 RESPECT TO MR. WILKES. WE'RE TALKING ONLY ABOUT WHETHER THE
13 CHARGES SHOULD BE DISMISSED WITH OR WITHOUT PREJUDICE.

14 MR. FORGE: AS WE POINTED OUT IN OUR PAPERS, THERE
15 IS NO PREJUDICE TO MR. WILKES BY DISMISSING THEM WITHOUT
16 PREJUDICE. THE SPEEDY TRIAL CLOCK IS FROZEN IN TIME HERE. WE
17 DON'T GET TO START OVER AGAIN. IN FACT, ODDLY IN THEIR
18 PAPERS, MR. WILKES PROFESSES A DESIRE TO GET THIS CASE TO
19 TRIAL, YET THEY ARE CHOOSING A DISTRICT WHICH, BY ALL
20 ACCOUNTS, WILL ALMOST GUARANTEE TWICE OR MAYBE A LONGER TIME
21 UNTIL THIS CASE GETS TO TRIAL.

22 SO I THINK WE HAVE TAKE WITH MORE THAN A GRAIN OF
23 SALT THEIR CONTENTION THAT BY SOMEHOW DISMISSING WITHOUT
24 PREJUDICE, WE ARE GOING TO DEPRIVE THEM OF HIS RIGHT TO A
25 SPEEDY TRIAL. THAT'S JUST NOT THE CASE.

COMPUTER-AIDED TRANSCRIPTION

1 THE COURT: THE COURT FINDS AS FOLLOWS: FIRST,
2 THERE'S A PRESUMPTION IN THE CASE LAW UNDER RULE 48 THAT I
3 SHOULD GRANT THE RULE 48(A) MOTION WITHOUT PREJUDICE UNLESS I
4 MAKE CONTRARY FINDINGS THAT THE BASIS FOR THE MOTION WAS
5 DESIGNED TO PREJUDICE THE DEFENDANT. I DON'T MAKE THOSE
6 FINDINGS HERE.

7 MR. CAHN: MAY I SPEAK TO ONE OTHER MATTER?

8 THE COURT: SURE.

9 MR. CAHN: I SPOKE ABOUT THE SPECIFIC INTENT TO
10 MANIPULATE JURISDICTION, BUT I THINK THERE'S ANOTHER THING AT
11 ISSUE HERE. I KNOW THE COURT HAS SOME PROBLEMS WITH THIS, BUT
12 I NEED TO ADDRESS IT NOW. THAT'S THE QUESTION OF COUNSEL AND
13 ACCESS TO COUNSEL. I ALSO BELIEVE THAT THERE'S A DELIBERATE
14 EFFORT TO INTERFERE AND MANIPULATE MR. WILKES'S ABILITY TO
15 ACCESS COUNSEL.

16 THE COURT: WE DON'T EVEN KNOW THAT THEY'RE GOING TO
17 REINSTATE THIS CHARGE. IF THEY DON'T, THEN HE HAS NEITHER A
18 RIGHT OR A NEED FOR COUNSEL.

19 MR. CAHN: IF THEY DON'T. BUT, YOU KNOW, JUDGE,
20 I'VE BEEN DOING THIS A LONG TIME. I KNOW YOU HAVE, ALSO.

21 THE COURT: YES.

22 MR. CAHN: AND MY JUDGMENT IS BASED ON THE
23 UNWILLINGNESS TO MAKE ANY STATEMENT. AND BASED UPON
24 EVERYTHING I'VE SEEN, HE'S VERY LIKELY TO BE REINDICTED. HE
25 IS VERY LIKELY TO FACE THESE CHARGES.

1 THE COURT: IS THERE ANYTHING THAT WOULD FORECLOSE A
2 DISTRICT JUDGE IN THE EASTERN DISTRICT OF VIRGINIA, IF THAT'S
3 WHERE THE INDICTMENT CROPS BACK UP, FROM APPOINTING YOU? YOU
4 AND MS. CHARLICK WERE PREPARED TO GO TO D.C. HE HAD WAIVED
5 HIS RIGHT, AND YOU WERE GOING TO CONTINUE AS COUNSEL THERE.
6 IS THERE ANYTHING YOU CAN POINT TO THAT SAYS THAT MR. WILKES
7 CAN SAY, "WAIT A MINUTE. I HAVE A COUPLE OF REALLY GOOD
8 LAWYERS I HAVE CONFIDENCE IN. THEY'RE APPOINTED. I'VE
9 QUALIFIED FOR APPOINTED COUNSEL"?

10 MR. CAHN: YOUR HONOR, I'D LIKE TO SPEAK TO THAT,
11 ALSO.

12 THE COURT: IS THERE ANYTHING -- ASSUMING THOSE
13 HURDLES ARE MET, IS THERE ANYTHING PRECLUDING A JUDGE IN THE
14 EASTERN DISTRICT FROM APPOINTING YOU TO REPRESENT HIM?

15 MR. CAHN: THE QUESTION, I BELIEVE, WOULD BE THE
16 PLAN OF THAT DISTRICT AND WHETHER THAT DISTRICT ALLOWED SUCH
17 APPOINTMENT. I DON'T KNOW THE ANSWER TO THAT QUESTION. I SAY
18 THIS ADVISEDLY. I'VE DONE SOME LOOKING INTO THE MATTER.
19 MR. FORGE HAS ALSO DONE SOME LOOKING INTO THE MATTER.

20 AT THE SAME TIME THEY WERE FILING THEIR MOTIONS TO
21 TERMINATE OUR ROLE AS COUNSEL FOR MR. WILKES AND MOVING TO
22 DISMISS THIS CASE, MR. FORGE WAS CONTACTING THE ADMINISTRATIVE
23 OFFICE OF THE COURTS TRYING TO FIND OUT WHETHER OR NOT WE
24 COULD PRACTICE OUTSIDE OF THIS DISTRICT. I BELIEVE THIS IS A
25 DELIBERATE EFFORT ON THE PART OF THE PROSECUTION TO INTERFERE

1 WITH MR. WILKES'S RIGHTS.

2 SO THE ANSWER TO THAT QUESTION IS IT'S UNKNOWN
3 WHETHER OR NOT WE WOULD BE ABLE TO BE APPOINTED AND WHETHER OR
4 NOT WE COULD REPRESENT MR. WILKES.

5 I'D ALSO LIKE TO SPEAK VERY BRIEFLY TO THE ISSUE OF
6 THE AFFIDAVIT BECAUSE YOU SAID SOME THINGS THAT TOUCHED
7 PARTICULARLY UPON OUR ROLE --

8 THE COURT: I HAVEN'T INTENDED TO.

9 MR. CAHN: I DIDN'T MEAN IT IN THE WAY THAT YOU WERE
10 CASTING ASPERSIONS UPON US, BUT I DO THINK IT'S IMPORTANT TO
11 SAY THESE THINGS, YOUR HONOR.

12 I'VE BEEN DOING THIS FOR A LOT OF YEARS. FOR OVER
13 20 YEARS, I'VE BEEN INVOLVED IN PUBLIC DEFENSE. I'VE DONE
14 MANY OTHER THINGS. I CHOSE TO TAKE THIS ROLE BECAUSE I
15 BELIEVE STRONGLY THAT PEOPLE WHO DO NOT HAVE THE MONEY DESERVE
16 THE BEST REPRESENTATION THAT'S AVAILABLE, NO LESS THAN THOSE
17 WHO DO. I HAVE MANY TIMES TOLD CLIENTS, WHO I LOOKED INTO
18 THEIR FINANCIAL SITUATION, LEARNED THAT THEY HAD ASSETS THAT
19 MAYBE THE COURT WASN'T AWARE OF OR MAYBE MIGHT GIVE THEM THE
20 ABILITY TO HIRE COUNSEL. I'VE TOLD THEM "YOU SHOULD JUST GO
21 OUT AND HIRE COUNSEL SO I DON'T NEED TO GO TO THE COURT ON
22 THIS MATTER."

23 I'M FAMILIAR WITH MR. WILKES'S SITUATION. I'VE
24 FILED PAPERS. THEY ARE ABBREVIATED BECAUSE MATTERS ARE UNDER
25 SEAL. HIS PRIVACY RIGHTS ARE AT STAKE. NOT JUST MR. WILKES,

1 BUT HIS WIFE AND FAMILY. I'VE TRIED TO EXPLAIN TO THE COURT.
2 BUT THE LAST THING THAT WE DID IN OUR LAST MOTION TO MOVE TO
3 STRIKE, OUR FURTHER MOTION TO STRIKE, WAS SAY TO THE COURT
4 IF THE COURT WAS INCLINED TO LOOK IN ANY WAY IT CAN AT
5 MR. WILKES'S AFFIDAVIT, WE SHOULD BE ENTITLED TO A FULL
6 HEARING, WHICH WOULD INCLUDE WITNESSES AND EXPERT WITNESSES
7 THAT APPEARED IN DIVORCE COURT AND PRESENT FACT WITNESSES TO
8 TALK ABOUT WHAT HAPPENED IN A SPECIFIC SITUATION.

9 SO IT CONCERNS ME GREATLY WHEN THIS COURT TAKES THE
10 VIEW THAT IT'S BEEN MISLED AND THAT THE APPOINTMENT WASN'T
11 APPROPRIATE UNDER THE CIRCUMSTANCES WHEN WE HAVEN'T HAD AN
12 OPPORTUNITY TO MAKE THAT SHOWING.

13 I'M VERY MUCH CONCERNED THAT MR. WILKES HAS
14 ABSOLUTELY NO ASSETS TO HIRE COUNSEL, NO ASSETS TO PROTECT
15 HIMSELF FROM THE GOVERNMENT. HE'S BEEN PLACED IN AN
16 EXTRAORDINARILY DIFFICULT POSITION BY THIS DISMISSAL WITHOUT
17 PREJUDICE AND BY THE CIRCUMSTANCES OF THE COURT'S FINDINGS.

18 THE COURT: I'M ASSUMING, MR. CAHN, THAT THIS WILL
19 ALL BE LOOKED AT FRESH IN THE EVENT THERE IS A NEW INDICTMENT.
20 THERE WILL BE A MAGISTRATE JUDGE WHO DETERMINES APPOINTMENT OF
21 COUNSEL. HE'LL BE ASKED TO FILL OUT A FINANCIAL AFFIDAVIT.

22 I'M JUST TELLING YOU THAT I HAVE REVIEWED NOT THE
23 SEALED MATERIAL. I HAVEN'T LOOKED AT ANY OF THAT. BUT ON THE
24 BASIS OF THE MATERIAL YOU'VE SUBMITTED, WHICH IS UNDER SEAL
25 BUT NOT SUBPOENAED HERE -- I GUESS I SHOULD SAY I'VE LOOKED AT

1 THE SUBPOENAED MATERIAL THAT THE GOVERNMENT HAS SUBMITTED.
2 IT'S ABUNDANTLY CLEAR TO ME THAT THE INFORMATION IN THE
3 FINANCIAL AFFIDAVIT WAS NOT ACCURATE AND COMPLETE.

4 WE'RE SORT OF WHISTLING PAST THE GRAVEYARD TO SAY "I
5 HAVE NO MONEY. IT'S ALL IN THE JURISDICTION OF THE SUPERIOR
6 COURT" WHEN HE KNEW AND HE HAD TO KNOW. BECAUSE SEVEN DAYS
7 LATER, ALL OF THAT IS SETTLED AND THE MONIES ARE DISBURSED
8 PURSUANT TO A STIPULATION BETWEEN HIM AND HIS WIFE. AND THEN
9 A MILLION AND A HALF OR MORE GO INTO HIS LAWYER'S TRUST
10 ACCOUNT NOT SUPERVISED BY THE COURT.

11 MR. CAHN: THAT'S INCORRECT. THE \$1.5 MILLION IN
12 HIS LAWYER'S TRUST ACCOUNT REMAINED UNDER SUPERVISION OF THE
13 COURT, AND ALL OF IT WAS DISBURSED IN ACCORDANCE WITH ORDERS
14 OF THE COURT, AND NONE OF IT WAS DISBURSED TO PAY OTHER
15 THINGS.

16 THE COURT: IT WAS PURSUANT TO STIPULATIONS BETWEEN
17 HIM AND HIS EX-WIFE. AND THE COURT HAD NO REAL RESPONSIBILITY
18 OTHER THAN FUNCTIONARY TO SIGN OFF AND SAY, "THIS HASN'T BEEN
19 AGREED TO. I ORDER IT."

20 MR. GERAGOS: JUDGE, THAT'S NOT ACCURATE. THIS WAS
21 NOT AN UNCONTESTED DIVORCE MATTER IN WHICH THERE WERE FRIENDLY
22 AGREEMENTS.

23 THE COURT: TELL ME THIS, MR. CAHN: I SAW AT ONE
24 POINT THERE WAS A TRANSFER OF FUNDS PURSUANT TO THE COURT
25 ORDER TO HIS LAWYER'S ACCOUNT. THEREAFTER, THE INDICATIONS

1 ESSENTIALLY AMOUNT TO MISCELLANEOUS. AND IT'S APPARENT TO ME
2 THAT MR. WILKES WENT TO HIS LAWYER AND SAID "I NEED SOME MONEY
3 FOR MONTHLY EXPENSES," AND THE LAWYER DISBURSED THOSE FUNDS.

4 MR. CAHN: THAT'S NOT CORRECT. I DON'T HAVE ALL THE
5 DOCUMENTS HERE TO SHOW THE MANNER IN WHICH THOSE WERE
6 DISBURSED. BUT THE VAST MAJORITY OF THE MONEY WAS DISBURSED
7 TO PAY CREDITORS WHO HAD LIENS OR WHO HAD CLAIMS IN FRONT OF
8 THE --

9 THE COURT: THAT HAPPENED UP FRONT WHEN WE WERE
10 TALKING ABOUT 2.6.

11 MR. CAHN: FURTHER, THERE WERE AN EXTRAORDINARY
12 NUMBER OF DEBTS OUTSTANDING, INCLUDING THE MORTGAGE ON THE
13 HOUSE WHICH SECURED THE BOND.

14 THE COURT: WHAT ABOUT ALL THE VEHICLES AND BOATS
15 AND THE SEA-DOOS AND ALL OF THOSE THINGS? THE AFFIDAVIT
16 SPECIFICALLY SAYS, "TELL ABOUT ANY VEHICLES OR AUTOMOBILE."
17 THERE'S A ZERO WITH A LINE THROUGH IT.

18 MR. CAHN: THEY'RE SIMPLY NOT IN HIS POSSESSION. HE
19 OWNS ONE VEHICLE. THE VEHICLE IS A FORD TRUCK OF SOME SORT.
20 HIS DAUGHTER OWNS ONE VEHICLE THAT HAD BEEN GIFTED TO HER
21 SEVERAL YEARS BEFORE. THE WIFE OWNS ONE VEHICLE ON WHICH
22 MONEY WAS STILL OWED.

23 THE COURT: WHAT ABOUT THE BOATS AND IN PARENTHESES
24 NEXT TO THEM 2?

25 MR. CAHN: IT WAS A DIVORCE PETITION, YOUR HONOR.

1 IN DIVORCE LITIGATION, ALL ASSETS THAT HAVE EVER BEEN
2 POSSESSED HAD TO BE LISTED AND ADDRESSED IN ORDER TO MAKE SURE
3 THAT ONE SPOUSE CAN'T LATER COME BACK AND SAY, "OH, YOU HAD
4 THESE OTHER THINGS." THE FACT IS HE DIDN'T HAVE THOSE THINGS.
5 THEY HAVE LONG AGO BEEN DISPOSED OF, BEEN GIVEN AWAY, BEEN
6 SOLD. BUT AS A MATTER OF DEALING WITH THE DIVORCE COURT AND
7 THE WAY IN WHICH DIVORCE COURTS WORK -- THIS IS WHY I ASKED
8 FOR THE OPPORTUNITY TO BRING IN THE WITNESSES WHO WERE
9 ACTUALLY PART OF THE DIVORCE AND THE WITNESSES WHO WERE THE
10 EXPERT WITNESSES WHO COULD SPEAK ABOUT THE WAY IN WHICH
11 DIVORCE COURT WORKS.

12 THERE ARE VEHICLES LISTED THAT SIMPLY DON'T EXIST OR
13 DON'T EXIST ANYWHERE WITHIN MR. WILKES'S PURVIEW OF CONTROL.
14 SO THAT'S ONE OF THE THINGS THAT DISTURBS ME MOST ABOUT THE
15 WAY IN WHICH I BELIEVE THESE DOCUMENTS CAN BE MISINTERPRETED
16 AND MISUNDERSTOOD. I THINK THAT'S HAPPENED HERE.

17 THE SAME WAY IN WHICH THE BARE DOCUMENTS SHOWING
18 DISBURSEMENTS WITHOUT EXPLANATIONS FOR THE PEOPLE WHO MADE
19 THOSE DISBURSEMENTS PURSUANT TO COURT ORDERS TO ACCOMPLISH
20 CERTAIN PURPOSES LEAVE A MISIMPRESSION ABOUT WHAT WAS ACTUALLY
21 GOING ON.

22 I'VE TRIED TO CORRECT THAT MISIMPRESSION IN MY
23 PAPERS. OBVIOUSLY, I HAVEN'T BEEN AS EFFECTIVE AS I WOULD
24 LIKE. SO IF THE COURT'S GOING TO PROCEED ON ITS UNDERSTANDING
25 OF WHAT HAPPENED IN THIS DIVORCE PROCEEDING, I WOULD REALLY

1 LIKE THE OPPORTUNITY TO BRING THE WITNESSES ON AND CONVINCE
2 THE COURT THAT THE OPPOSITE IS TRUE.

3 THE COURT: MR. CAHN, THERE'S ONE OTHER THING THAT I
4 LOOKED AT AND I'VE ALLUDED TO. THERE WAS A PAYMENT OF \$90,000
5 APPROVED BY THE COURT TO RETAIN LAWYERS, DIVORCE LAWYERS AND
6 OTHER LAWYERS. \$90,000 CAME OUT.

7 WHY WOULD I BELIEVE THAT THE COURT WOULDN'T APPROVE
8 A PAYMENT FOR A RETAINED LAWYER TO DEFEND MR. WILKES ON THE
9 WILKES/FOGGO CASE? IT APPEARS TO BE A LEGITIMATE EXPENSE THAT
10 THE COURT'S RECOGNIZING. WHY DIDN'T HE? WHY DID HE COME AND
11 ASK ME TO GIVE HIM A TAXPAYER-FUNDED LAWYER WHEN HE'S PAYING
12 90,000 FOR OTHER LAWYERS?

13 MR. CAHN: LET ME ADDRESS THAT. LET ME BACK UP A
14 SECOND TO WHAT THE COURT SAID LAST.

15 I THINK IT'S REALLY IMPORTANT, IN LOOKING AT THIS,
16 THE COURT NEEDS TO REMEMBER THE CONTEXT OF THIS. THE CONTEXT
17 OF THIS IS THAT MR. WILKES -- AND I'VE SAID THIS BEFORE --
18 DIDN'T WANT PUBLIC COUNSEL. THE COURT ORDERED HIM TO EITHER
19 SHOW UP WITH A LAWYER FILE YOUR AFFIDAVIT ON THAT DATE. HE
20 ACTIVELY AVOIDED PUBLIC COUNSEL.

21 WHEN HE FIRST MET WITH MS. CHARLICK, HE MADE CLEAR
22 TO HER HE WANTED NOTHING TO DO WITH THE FEDERAL DEFENDERS'
23 OFFICE. HE DIDN'T WANT US. HE BELIEVED WE WERE BEING PAID BY
24 THE GOVERNMENT, WE WERE AN ARM OF THE GOVERNMENT, AND WE WOULD
25 NOT REPRESENT HIM PROPERLY. HE'S BEEN DISABUSED OF THAT

1 NOTION. MR. WILKES UNDERSTANDS OUR COMMITMENT TO THE WORK,
2 AND THAT'S NO LONGER AN ISSUE.

3 BUT THAT WAS HOW HE FELT THEN AT THE TIME HE FILED
4 THIS AFFIDAVIT. SO WITH THAT CONTEXT IN MIND, IT'S IMPORTANT
5 FOR THE COURT TO UNDERSTAND THAT HE HAD NO INTEREST IN
6 MISLEADING THE COURT TO COME TO A CONCLUSION THAT HE DIDN'T
7 HAVE ASSETS THAT HE HAD.

8 NOW, LET ME ADDRESS THE MONEY ITSELF. THERE WAS ONE
9 PAYMENT THAT WAS ALLOWED TO A CRIMINAL DEFENSE ATTORNEY THAT
10 PAID A VERY SMALL PORTION OF HIS FEE, AND THAT WAS AFTER
11 ENTREATIES BY MR. WILKES AND HIS LAWYERS TO THE COURT AND TO
12 THE LAWYERS ON THE OTHER SIDE TO NOT FIGHT THIS. BUT THERE
13 WAS NO MONEY RELEASED TO OTHER LAWYERS OTHER THAN THE DIVORCE
14 LAWYER.

15 THE COURT: THAT'S ONE OF THE POINTS. THE PROBLEM I
16 HAVE WITH THIS IS THAT MR. WILKES APPARENTLY HAS RESERVED UNTO
17 HIMSELF THE RIGHT TO PRIORITIZE DEBTS AND SAY, "WELL, I WANT
18 TO PAY FOR THIS" OR "I WANT TO FUND MY KIDS' EDUCATION, BUT I
19 DON'T WANT TO PAY YOU FOR MY CRIMINAL DEFENSE. EVEN THOUGH AT
20 FIRST I HAD SOME RELUCTANCE ABOUT IT, I'VE NOW SAT DOWN WITH
21 MR. CAHN AND MS. CHARLICK. I REALIZE THAT THEY'RE TOP-FLIGHT
22 LAWYERS. I'M HAPPY WITH THIS. SO WHY NOT LET THE GOVERNMENT
23 PAY?"

24 MR. CAHN: THAT'S SIMPLY NOT THE CASE. AND WHAT I
25 WAS ABOUT TO DO WAS ADDRESS THE PAYMENTS TO THE DIVORCE

1 LAWYERS. IT'S QUITE SIMPLY AN EXAMPLE OF THE SOLACES OF THE
2 VARIOUS COURTS THAT YOU THINK FROM THEIR PARTICULAR
3 PERSPECTIVES. AND THE SAME WAY BANKRUPTCY COURT PROVIDES
4 SUPER-PRIORITY FOR THE THIEVES AND THE BANKRUPTCY ATTORNEYS
5 WHO ARE BEFORE THEM. THEY GET PAID BEFORE EVERYONE ELSE NO
6 MATTER HOW LONG OUTSTANDING THE PRIOR DEBTS WERE.

7 THE DIVORCE COURTS ARE THE SAME WAY. THEY MAKE SURE
8 THAT THE PEOPLE -- THE MEDIATORS, THE ACCOUNTANTS, THE DIVORCE
9 ATTORNEYS -- COMING BEFORE THEM GET PRIORITY TO THOSE MONIES.
10 THAT'S ALL THAT HAPPENED HERE. MR. WILKES DESPERATELY WANTED
11 TO HIRE ANOTHER ATTORNEY. AND MR. IREDALE, WHO WAS HERE, HE
12 TRIED DESPERATELY TO CONVINCE MR. IREDALE THAT "IF YOU GIVE ME
13 SOME TIME, I'LL FREE UP ENOUGH CASH AND EQUITY AND PROPERTIES
14 THAT WILL ALLOW YOU TO BE HIRED."

15 MR. IREDALE IS AN EXPERIENCED ATTORNEY AND
16 EXPERIENCED IN MATTERS THAT I'M NOT, WHICH IS THE MANNER IN
17 WHICH A CRIMINAL DEFENSE ATTORNEY CAN ACTUALLY ENSURE THAT
18 THEY COLLECT FEES THAT THEY'RE ENTITLED TO.

19 HE LOOKED AT THE DIVORCE PROCEEDINGS. HE LOOKED AT
20 THE EQUITY IN THE PROPERTIES, INCLUDING THE LIENS THAT WERE
21 PLACED AGAINST THOSE PROPERTIES IN CONNECTION WITH THE BOND
22 AND THE LIENS THAT WERE PLACED BY OTHER CREDITORS AND THE
23 UNDERSTANDING OF THE WAY IN WHICH THE DIVORCE COURT WOULD WORK
24 TO ACQUIRE ASSETS TO BE USED TO PAY COMMUNITY DEBTS RATHER
25 THAN SEPARATE DEBTS IN ORDER TO ENSURE THAT THE OTHER MEMBER

1 OF THE COMMUNITY, THE SPOUSE, WOULDN'T BE REQUIRED TO PAY
2 THOSE DEBTS AFTER THE FACT. HE CAME TO THE POINT OF VIEW THAT
3 MR. WILKES COULDN'T PAY EVEN THE SMALLEST PORTION OF HIS FEE.

4 NOW, COULD MR. WILKES HAVE BEEN MORE DETAILED ABOUT
5 EVERYTHING? HE CERTAINLY COULD HAVE. HAD HE GOTTEN A CHANCE
6 TO SIT DOWN WITH MS. CHARLICK OR MR. GERAGOS AND HAD GOTTEN
7 MORE ADVICE ABOUT IT, HE PROBABLY WOULD HAVE LISTED IN DETAIL.
8 BUT THE BOTTOM LINE WOULD HAVE BEEN THE SAME. THERE WERE NO
9 ASSETS FOR HIM TO GET TO TO PAY THE LAWYER.

10 AND I SAY THAT WITH MY YEARS OF EXPERIENCE BEHIND
11 EVALUATING THESE KINDS OF THINGS, WITH MY COMMITMENT TO MAKING
12 SURE THAT OUR SERVICES, WHICH ARE LIMITED, ARE RESERVED FOR
13 THOSE WHO CAN'T PAY IN ORDER TO ENSURE THOSE PEOPLE THE BEST
14 REPRESENTATION POSSIBLE AND WITH MY KNOWLEDGE OF THE FACTS
15 HAVING TALKED SPECIFICALLY TO PEOPLE INVOLVED IN THE DIVORCE
16 PROCEEDING ABOUT WHAT WENT ON.

17 SO I'D ASK BEFORE THE COURT RELIES IN ANY WAY ON
18 THAT VIEW OF WHAT HAPPENED HERE, THAT THE COURT GIVE US A
19 CHANCE TO ACTUALLY BRING ON LIVE WITNESSES AND CONVINCE THE
20 COURT OF THE OPPOSITE.

21 THE COURT: ANYTHING ELSE, MR. FORGE?

22 MR. FORGE: I CAN ADDRESS PRETTY MUCH EVERYTHING
23 MR. CAHN TALKED ABOUT. I DON'T SEE HOW ANY OF THIS IS GERMANE
24 TO THE ISSUE ABOUT DISMISSING MR. WILKES WITHOUT PREJUDICE.
25 HE HAS THESE GREAT ARGUMENTS. HE CAN MAKE THEM.

1 THE COURT: WELL, THERE IS A PENDING MOTION TO HAVE
2 HIM REPAY FUNDS. I'M NOT INCLINED TO GRANT THAT.

3 MR. GERAGOS: THE PROBLEM IS -- THIS IS EXACTLY WHY
4 I ASKED FOR THE HEARING -- THE COURT HAS MADE CERTAIN FINDINGS
5 REGARDING HIS BAIL STATUS. AND ABSENT SOME KIND OF A
6 HEARING -- AND ALL OF THOSE GO TO THE GRAVAMEN OF HIS
7 FINANCIAL AFFIDAVIT. AND UNLESS WE HAVE SOME KIND OF A
8 HEARING TO GET TO THE BOTTOM OF THIS, THE COURT'S MADE CERTAIN
9 FINDINGS THAT I DON'T THINK ARE CORRECT.

10 THE COURT: I DISAGREE. THE GOVERNMENT DISAGREES
11 WITH YOU, TOO. WITH ALL RESPECT TO MR. CAHN, WHOSE EXPERIENCE
12 AND HONESTY I RESPECT AND HOLD VERY HIGH, I READ THE FINANCIAL
13 RECORDS THAT HAVE BEEN PROVIDED QUITE DIFFERENTLY THAN
14 MR. CAHN DOES AND YOU DO. THE GOVERNMENT READS THEM THE SAME
15 WAY I DO.

16 THERE WERE DISBURSEMENTS TO HIM OF \$65,000 IN
17 NOVEMBER. AND I'VE LOOKED BACK. I'VE LOOKED AT THE EARLIER
18 DISBURSEMENTS TO PAY OFF OVERDUE MORTGAGES, TAXES, AND THE
19 LIKE. ALL OF THAT CAME OUT OF THE 2.6. AND HIS KIDS' TRUST
20 FUNDS GOT FUNDED OUT OF THAT, TOO. I HAVEN'T TAKEN ISSUE WITH
21 THAT BECAUSE I UNDERSTAND THAT THE ARRANGEMENT WAS MADE IN
22 2001 FOR THAT.

23 IT'S A LITTLE IRONIC IN LIGHT OF WHAT MR. HALPERN
24 POINTS OUT THAT WHEN HE NEEDED TO TAKE MONEY OUT OF THOSE
25 FUNDS FOR HIS OWN PURPOSES, HE DID. BUT IT'S ABOUT ACCESS

1 HERE. AND MR. SCHULER'S DECLARATION DOESN'T DO ANYTHING TO
2 DISABUSE ME OF WHAT'S APPARENT ON THE FACE OF THAT
3 DECLARATION, WHICH IS WHEN MR. WILKES ASKED AND IF IT WAS AT
4 LEAST ON ITS FACE A CREDIBLE REASON, MR. SCHULER WOULD
5 DISBURSE FUNDS TO HIM.

6 LIKE I SAID, IT'S GREAT THAT THE DIVORCE COURT
7 THINKS DIVORCE LAWYERS OUGHT TO BE PAID. I THINK CRIMINAL
8 LAWYERS OUGHT TO BE PAID. AND I'M NOT BOUND BY THAT
9 DETERMINATION. HERE ARE THE DIVORCE LAWYERS TAKING HUGE
10 PORTIONS OUT OF THIS. WHY COULDN'T THE DIVORCE HAVE WAITED?
11 HERE'S A FELLOW --

12 MR. GERAGOS: THERE'S A LOT OF GUYS WHO WOULD LIKE
13 TO ASK THAT QUESTION.

14 THE COURT: HERE'S A FELLOW WHO'S ON FIRE AND NEEDS
15 SOMEBODY TO PUT HIM OUT RIGHT AWAY, AND THAT PERSON IS A
16 RETAINED CRIMINAL DEFENSE LAWYER, AND YOU MEAN TO TELL ME THAT
17 THE DIVORCE HAS PRIORITY OVER THAT? I DON'T THINK SO. I
18 THINK ALL MR. WILKES HAD TO DO WAS DIG IN HIS FEET AND SAY,
19 "WAIT A MINUTE. THEY'RE TRYING TO PUT ME IN JAIL. AND SO
20 LET'S HOLD OFF ON THIS THING. I NEED MONEY TO DEFEND MYSELF."
21 MONEY WAS APPROPRIATED FOR HIS DEFENSE, AND I HAVE NO REASON
22 TO SEE WHY ADDITIONAL MONIES WOULDN'T HAVE BEEN APPROPRIATED.
23 SO I'VE HEARD IT. YOU CAN TAKE -- IT'S NOT PARTICULARLY
24 GERMANE TO THIS.

25 THE COURT GRANTS THE MOTION TO DISMISS WITHOUT

COMPUTER-AIDED TRANSCRIPTION

1 PREJUDICE. THERE'S A PRESUMPTION THAT I MUST DO SO UNDER
2 RULE 48(A) UNLESS I FIND THAT THE PURPOSE OF THE DISMISSAL WAS
3 TO PREJUDICE THE DEFENDANT OR TO FORCE THE SYSTEM AROUND. I
4 DON'T FIND THAT HERE. I THINK THEY BROUGHT THIS IN THIS
5 DISTRICT IN THE FIRST INSTANCE FOR THEIR OWN CONVENIENCE.
6 THERE WAS AN ARGUABLE NEXUS HERE. SOME OF THE THINGS
7 HAPPENED. I WAS CONVINCED BY THE FIRST APPLICATION ON PART OF
8 COUNSEL FOR FOGGO THAT MOST OF WHAT HAPPENED OCCURRED IN THE
9 EASTERN DISTRICT OF VIRGINIA. AND FOR ALL OF THE REASONS SET
10 OUT IN THE RULE, THAT WAS THE APPROPRIATE VENUE FOR THE PLACE.

11 I WAS PREPARED, AS YOU KNOW, TO SEND THE CASE THERE,
12 EXCEPT THAT I BECAME CONVINCED THAT I HAD TO HAVE MR. WILKES'S
13 ACQUIESCE TO THAT WHETHER OR NOT HE WAS IN CUSTODY, AS HE
14 NOW IS.

15 HE GAVE UP AND SAID, "WELL, I'LL GO TO D.C." I WAS
16 GOING TO SEND THE CASE THERE. THAT WAS MY NEXT MOVE. I THINK
17 THAT THE APPLICATION WAS APPROPRIATE. I THINK THAT THE
18 CIRCUMSTANCES JUSTIFIED TRANSFER OF THIS CASE TO WHERE THE
19 CASE OCCURRED. BUT AS I SAID, THAT'S A LITTLE CART BEFORE THE
20 HORSE. WHAT I HAVE TO FIND HERE TO DISMISS WITH PREJUDICE IS
21 THAT THE GOVERNMENT HAD SOME IMPROPER MOTIVE AND THEY
22 MANIPULATED THIS CHARGE TO HIS DETRIMENT. THEY DON'T GET ANY
23 ADVANTAGE UNDER THE SPEEDY TRIAL ACT IN THE EVENT THEY
24 REINDICT.

25 I CAN'T SAY WHETHER THEY WILL. I DON'T KNOW. IT IS

1 A LITTLE SUSPICIOUS TO ME, AS YOU POINT OUT, THAT MR. FORGE
2 WOULD BE QUESTIONING WHETHER YOU COULD BE APPOINTED COUNSEL IN
3 THE EASTERN DISTRICT OF VIRGINIA. I'LL TAKE HIM AT HIS WORD.
4 TODAY HE'S TOLD ME THAT THE DIE HAS NOT BEEN CAST ON THAT.
5 THEY DON'T KNOW WHETHER THEY'RE GOING TO REINDICT.

6 AND I SUPPOSE WHAT THEY WERE WAITING ON WAS TO HEAR
7 WHAT THE SENTENCE WAS IN THIS CASE. IF I IMPOSED 300 MONTHS,
8 YOU MIGHT EVEN HAVE A DIFFERENT VIEW OF WHETHER THEY WERE
9 GOING TO BRING AN ADDITIONAL CHARGE AGAINST HIM IN THE EASTERN
10 DISTRICT OF VIRGINIA.

11 SO I DON'T KNOW HOW IT CUTS THAT I IMPOSED THE
12 SENTENCE I DID. I DON'T THINK THEY'VE BEEN GAMING THE SYSTEM.
13 LOOK, YOU'RE A FINE LAWYER, AND SO IS MS. CHARLICK. AND MAYBE
14 THE GOVERNMENT'S A LITTLE AFRAID. MAYBE THEY DON'T WANT YOU
15 ON THE CASE. THAT HAS NEVER MOTIVATED ME. I'VE KEPT YOU ON
16 THE CASE. THEY DON'T HAVE ANY SAY IN THAT. IF A MAGISTRATE
17 JUDGE IN THE EASTERN DISTRICT OF VIRGINIA IN THE EVENT THE
18 CASE GETS REINDICTED WANTS TO APPOINT YOU AND CALLS ME, I'LL
19 SAY, "YEAH, THIS IS A FELLOW THAT'S VERY WELL-EQUIPPED TO
20 DEFEND THIS GUY AND HAS BACKGROUND IN THIS CASE ALREADY. AND
21 IT SEEMS TO ME THAT WOULD BE A GOOD EXPENDITURE OF PUBLIC
22 FUNDS." BUT I LEAVE THAT FOR ANOTHER DAY AND ANOTHER JUDICIAL
23 OFFICER.

24 THE MOTION TO DISMISS WITHOUT PREJUDICE IS GRANTED.
25 NOW, TURNING MY ATTENTION TO COUNSEL FOR MR. FOGGO,

1 YOU'VE TAKEN THE POSITION THAT A TRANSFER TO EITHER THE
2 EASTERN DISTRICT OF VIRGINIA OR THE DISTRICT OF COLUMBIA IS
3 APPROPRIATE.

4 DO YOU ADHERE TO THAT POSITION TODAY?

5 MR. TESLIK: YES, YOUR HONOR. YOU KNOW BY WAY OF
6 BACKGROUND WE INITIALLY BROUGHT OUR REQUEST SEEKING TRANSFER
7 TO THE EASTERN DISTRICT OF VIRGINIA. WE THEN MODIFIED THAT
8 AND ASKED THAT THE TRANSFER BE TO THE DISTRICT OF COLUMBIA.
9 THAT, OF COURSE, WAS IN CONSULTATION WITH COUNSEL FOR
10 MR. WILKES.

11 FRANKLY, WE THINK THAT EITHER OF THOSE JURISDICTIONS
12 WILL BE CONVENIENT FOR THE PARTIES AND THE WITNESSES. WE
13 THINK THAT JUSTICE REQUIRES IT TO BE TRANSFERRED TO THIS AREA,
14 AS YOUR HONOR KNOWS. NOTWITHSTANDING THE SUGGESTION THAT THIS
15 COULD GO TO RICHMOND OR NORFOLK, WHICH I GUESS IS A
16 POSSIBILITY, WE WOULD CERTAINLY -- IF YOUR HONOR WERE TO
17 TRANSFER THIS TO THE EASTERN DISTRICT OF VIRGINIA, WE WOULD
18 CERTAINLY SEEK TO HAVE IT IN ALEXANDRIA. BUT WE WOULD BE
19 HAPPY WITH EITHER JURISDICTION, YOUR HONOR.

20 THE COURT: THE GOVERNMENT HAS FILED A NOTICE OF
21 NON-OPPOSITION TO THE TRANSFER OF THE FOGGO CASE AT THIS
22 POINT?

23 MR. FORGE: TO THE EASTERN DISTRICT OF VIRGINIA,
24 YOUR HONOR, YES.

25 THE COURT: THE COURT GRANTS THE MOTION TO TRANSFER

COMPUTER-AIDED TRANSCRIPTION

1 THE FOGGO CASE, WHICH IS NOW A STAND-ALONE CASE, TO THE
2 EASTERN DISTRICT OF VIRGINIA. I ADOPT THE INITIAL APPLICATION
3 FILED ON BEHALF OF MR. FOGGO AND THE REASONS SET FORTH THAT
4 THE TRANSFER IS WARRANTED IN THIS CASE.

5 IN ESSENCE, IT TURNS ON THIS: MOST OF THE EVENTS --
6 IT'S HARD TO QUANTIFY, BUT LET'S SAY 95 PERCENT OF THE EVENTS
7 OCCURRED -- AT LEAST AS ALLEGED OCCURRED IN THAT DISTRICT.
8 MOST OF THE WITNESSES ARE IN THAT DISTRICT. MR. FOGGO IS
9 BEING REPRESENTED BY PRO BONO COUNSEL. AND I FIND THAT IT'S
10 HIS CONVENIENCE AND TAKES INTO CONSIDERATION PRO BONO COUNSEL
11 IS ALREADY OPERATING ON THEIR OWN NICKEL TO TRANSFER THE CASE
12 THERE.

13 IN ADDITION, THE LATEST INFORMATION CONVINCES ME
14 THAT THERE IS MULTIPLE SCIF SPACE AVAILABLE. A SCIF IS
15 A PRIVATE ROOM WHERE SOME OF THESE CLASSIFIED DOCUMENTS HAVE
16 TO BE REVIEWED. AND ALTHOUGH ONE IS BEING CONSTRUCTED IN THIS
17 DISTRICT AND I'M TOLD ONE EXISTS IN THE DISTRICT OF COLUMBIA,
18 I'M ALSO TOLD THAT THERE ARE MULTIPLE SCIF'S THAT COULD BE
19 AVAILABLE FOR FURTHER REVIEW AND PREPARATION OF THIS CASE IN
20 THE EASTERN DISTRICT.

21 SO I FIND IT'S IN THE INTEREST OF JUSTICE. I GRANT
22 MR. FOGGO'S MOTION TO TRANSFER THE CASE THERE. A WRITTEN
23 ORDER TO THAT EFFECT WILL FOLLOW.

24 HAVE YOU PREPARED SUCH AN ORDER, MR. BHANDARI?

25 MR. FORGE: WE HAVE NOT. WE'LL CONSULT WITH

1 MR. FOGGO'S COUNSEL.

2 THE COURT: MS. CHU SAYS YES.

3 MR. FORGE: I'M SORRY. I APOLOGIZE. WE HAVE
4 PREPARED AN ORDER.

5 THE COURT: IT'S SOMEWHERE IN THIS MASS OF PAPERS.
6 PLEASE RESUBMIT THAT ORDER. THE MOTION IS GRANTED.

7 WHAT'S LEFT, MR. CAHN, IS THIS MOTION TO REQUIRE
8 REPAYMENT. I DECLINE TO DO THAT. YOU, AS THE HEAD OF FEDERAL
9 DEFENDERS, HAVE AN INTEREST IN MAINTAINING THE FISK OF FEDERAL
10 DEFENDERS. AND IF YOU THINK -- OBVIOUSLY, YOU THINK THIS
11 APPOINTMENT WAS WARRANTED. SO I'M GOING TO DEFER TO YOU. I
12 DENY THE MOTION TO MAKE MR. WILKES PAY ANY MONEY BACK.

13 IF ASKED BY A MAGISTRATE JUDGE IN THE EASTERN
14 DISTRICT OF VIRGINIA IN THE EVENT OF A REINDICTMENT TO
15 RECOMMEND COUNSEL, I WOULD RECOMMEND YOU AND MS. CHARLICK.
16 YOU ARE EXPERIENCED, AND YOU HAVE A GRASP OF THIS CASE, AND
17 YOU HAVE A SUBSTANTIAL INVESTMENT OF TIME IN IT. SO THAT'S MY
18 RECOMMENDATION TO THE MAGISTRATE JUDGE. WHETHER THAT SQUARES
19 WITH THEIR PROCEDURES, I DON'T KNOW. BUT THAT'S MY
20 RECOMMENDATION. AND YOU CAN HAVE THE PERSON CALL ME IF YOU
21 WANT IN THE EVENT THERE'S A NEW INDICTMENT. I DON'T KNOW THAT
22 THERE WILL BE.

23 ANYTHING ELSE FROM COUNSEL FOR MR. FOGGO?

24 MR. TESLIK: NO, YOUR HONOR.

25 THE COURT: ANYTHING ELSE ON BEHALF OF MR. WILKES ON

1 THE WILKES/FOGGO CASE?

2 MR. CAHN: ON THE WILKES/FOGGO CASE, NOTHING
3 FURTHER. I THINK MR. GERAGOS HAS SOMETHING.

4 THE COURT: MR. GERAGOS.

5 MR. GERAGOS: I DO.

6 ON THE RECORD, COULD I FILE THE NOTICE OF APPEAL?

7 THE COURT: YOU MAY.

8 WE'RE IN RECESS ON THIS MATTER.

9 --OOO--

10

11

12 I HEREBY CERTIFY THAT THE TESTIMONY
13 ADDUCED IN THE FOREGOING MATTER IS
14 A TRUE RECORD OF SAID PROCEEDINGS.

15

16

S/EVA OEMICK

2-21-08

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EVA OEMICK
OFFICIAL COURT REPORTER

DATE

COMPUTER-AIDED TRANSCRIPTION